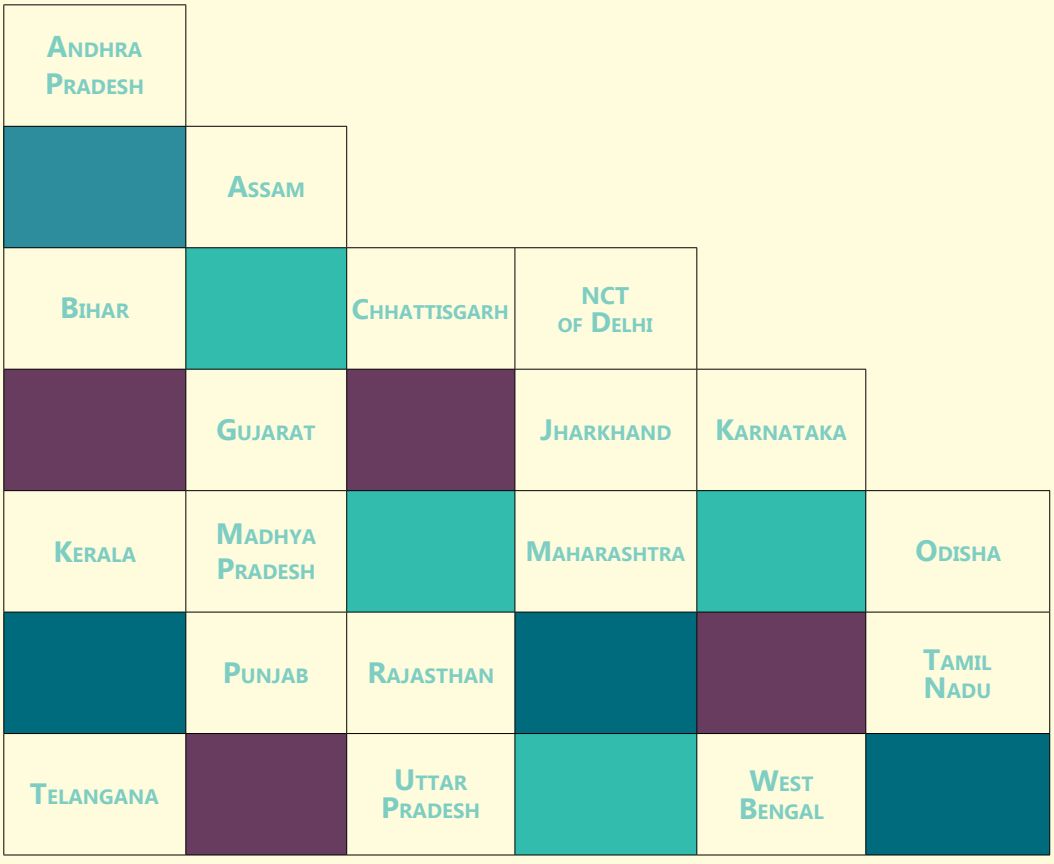
The Annual Survey of State Laws in India

Editors

Amita Dhanda • Faizan Mustafa



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The Annual Survey of State Laws in India

Edited by Amita Dhanda and Faizan Mustafa

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INTRODUCTION

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

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

The Division of Legislative Powers in the Constitution

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

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

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

2. The Constitution of India, art. 245.

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

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

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

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

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

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

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

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

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

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

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

16. *Ibid.*

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

Findings from the Surveys

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

Various Kinds of Federalism

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

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

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

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

Taxation and Fiscal Federalism

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

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

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

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

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

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

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

The Politics of Law-Making

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

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

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

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

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

Devolution of Powers

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

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

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

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

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

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

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

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

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

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

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

Nature of Legislative Process: Curtailed Deliberation

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

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

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

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

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

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

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

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

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

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

Law-Making on the Pandemic

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

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

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

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

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

Land Laws

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

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

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

Labour Reform and Ease of Doing Business

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

Education

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

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

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

Religion and Law

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

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

Preserving Memory

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

Appropriation Acts

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

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

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

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

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

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

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

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

Standalone Approaches

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

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

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

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

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

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

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

Learnings from the 2020 Survey

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

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

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

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

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

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

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

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

Amita Dhanda and Faizan Mustafa

April 4 2022, Hyderabad

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

The Annual Survey of State Laws in India

ANDHRA PRADESH

Anindita Mukherjee[1]

Introduction

The Andhra Pradesh legislative assembly is in its fifteenth term, and the second since the state was bifurcated in 2014. The last Assembly elections, held in 2019 along with the general elections, lead to a massive upset for the incumbent Telugu Desam Party (TDP). The YSR Congress Party (YSRCP), helmed by YS Jagan Mohan Reddy, was elected to form government with its largest poll margin till date—they won 151 of 175 seats.[2] In keeping with some of their electoral promises, the government announced a slew of public policy decisions relating to education and social welfare almost immediately after coming to power in May 2019. A substantial portion of the government's legislative activity in 2020, therefore, came down to fine-tuning decisions made in 2019 and responding to judicial challenges to them. The pandemic, of course, was the other significant determinant, both of the level of legislative engagement over the year and its substance.

The Year in Numbers

The AP legislature, according to statistics collated by PRS Legislative Research (PRS), has consistently spent fewer days in session than the national average. As per the PRS annual review of state laws, among the 19 states that make this data available publicly, the average number of days that state legislatures have been in session between 2016 and 2019 is 29, while in 2020 they sat for an average of 18 days.[3] Data disclosed by the AP government show that the Assembly has been sitting for around 25-26 days a year since 2014.[4] In 2020, that number was halved to 12, of which five were before the lockdown and seven, after. The number of hours spent in session also dropped proportionately, with the opposition (TDP) speaking for a paltry 5.8 hours in the entire year in comparison with the ruling party's 72.8 hours,[5] indicating that most decisions made through the pandemic in the Assembly did not see robust interrogation by the opposition within the Assembly.

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1. Doctoral Fellow, NALSAR University of Law.
2. E Venkatesu, "Post-poll survey: dalits and farmers solidly behind YSRCP in Andhra Pradesh", *The Hindu*, May 27, 2019.
3. 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 March 5, 2022).
4. The number dropped to 18 in 2016, when the Assembly met only twice, as opposed to the usual three sessions a year. AP Legislature, Assembly Statistics, *available at*: https://www.aplegislature.org/web/aplegislature/statistics (last visited on March 5, 2022).
5. AP Legislature, Working Analysis of the XV AP Legislative Assembly, *available at*: https://legislation.aplegislature.org/PreviewPage.do?filePath=basePath&fileName=WorkingAnalysis/Assembly/Workinganalysis_Assembly_18_1.pdf (last visited on March 5, 2022).

Despite the lacklustre performance of the Assembly in terms of time spent in session, its legislative output remained on par with non-pandemic years[6] and well above the national average for 2020.[7] The Assembly passed 33 bills over the year, of which four were appropriation bills. Most bills received scant debate in the Assembly, with 16 being passed on the day they were introduced, 13 on the next day and four taking between three to four days to be passed. Three, out of the 29 substantive bills passed, were reserved by the governor for the president's assent. Of these, the president has withheld his assent to two. As a consequence, two bills passed by the Assembly in 2020 have yet to come into force; two came into force in 2021, and the remaining 29, in 2020. In addition, 16 bills passed in 2019 came into force in 2020.

Amongst the 29 bills passed (excluding appropriation bills) one sought to repeal an existing statute, 19 were amendments to Acts and nine were new laws. Four of the bills passed in 2019 which came into force in 2020 were new statutes on the book while the remaining 12 amended existing legislations.

Interestingly, a significant number of the bills passed through the year started out as ordinances. While between 2017 and 2019, the average number of ordinances promulgated hovered between five and six, in 2020, the number tripled to 17. All but one (which was struck down by the AP high court)[8] were laid before the Assembly per procedure and none were re-promulgated, with the possible exception of one.[9] Fifteen of these ordinances are now state statutes.[10] Alongside its legislative business, the Assembly also adopted five resolutions through the year, most of which had substantive bearing on questions of institutional independence both within the state and in the federal setup.

A Note on the Legislative Council

Andhra Pradesh has a bi-cameral system, yet this discussion of AP's legislative activity concentrates on the functioning of the Assembly. This is because 2020 was a tumultuous year for the legislative council, with the Assembly resolving to have it dissolved early in the year.[11] While the Council continued to sit—it met for nine days in 2020, down from 23 in 2019[12]—its role and function was mired in controversy. This paper will, therefore, focus on the actions of the Assembly, except in contexts where it came into conflict with the Council (where it will discuss both).

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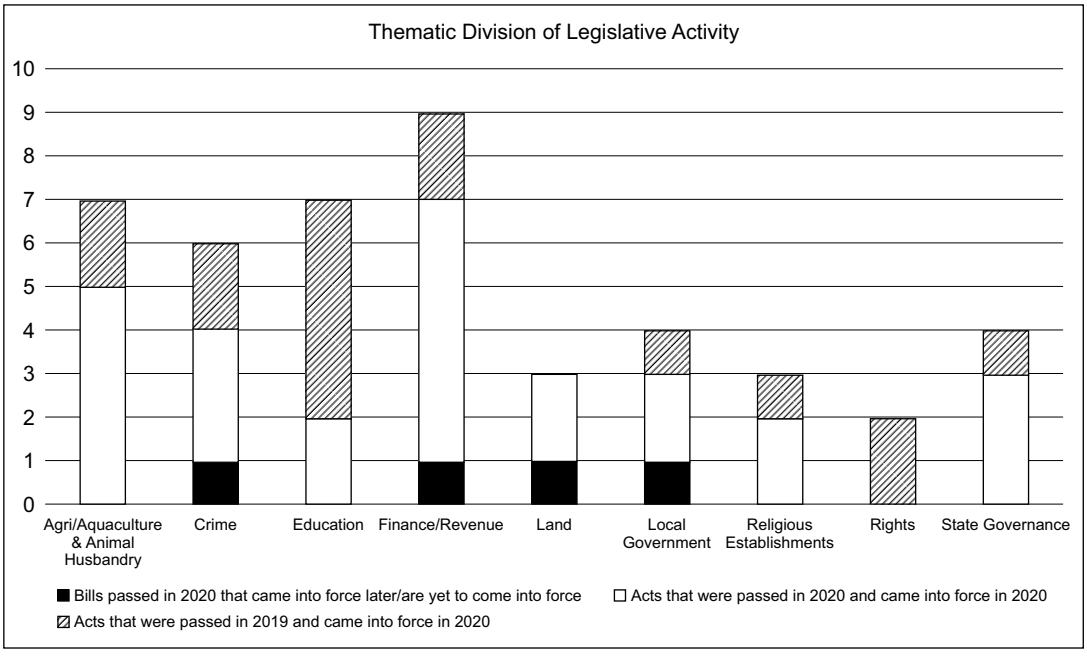
6. Thirty-nine bills were passed in 2017; 25, in 2018 (when only two sessions were held) and in 2019, the TDP government passed 20 Bills, followed by 41 by the new YSRCP government. The average number of bills passed between 2014 and 2019 (the five-year term of the XIV Assembly) was 26.6.
7. The average excluding appropriation bills for the 19 states surveyed by PRS in 2020 was 22 bills. *See* 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 March 5, 2022).
8. The Andhra Pradesh Panchayat Raj (Second Amendment) Ordinance, 2020 (Ordinance 5 of 2020) struck down by the AP HC in *N Ramesh Kumar* v. *State of Andhra Pradesh*, WP No 8163 of 2020 *decided on* May 29, 2020.
9. The Andhra Pradesh Panchayat Raj (Amendment) Second Ordinance, 2020 (Ordinance 6 of 2020) was possibly a re-promulgation of the Andhra Pradesh Panchayat Raj (Amendment) Ordinance, 2020 (Ordinance 2 of 2020) after the first session of the year, but the text of the ordinance is unavailable. Nonetheless, it was laid before the Assembly in November 2020 along with the others that were promulgated in the interim.
10. Thirteen came into force in 2020, two in 2021.
11. AP Legislature, Resolution on Abolition of Legislative Council, Jan. 27, 2020.
12. AP Legislature, Council Statistics, *available at*: https://www.aplegislature.org/web/aplegislature/statistics (last visited on March 5, 2022).

Legislative Activity Classified Thematically

The graph below breaks down the legislative output of the state into nine broad categories. The ordinances promulgated are absent because they were mostly absorbed into legislation within the year, thus their inclusion would double numbers and render analysis inaccurate. However, it must be noted that four ordinances of the 17 promulgated were not enacted as statutes within 2020. All four of these were amendments to statutes on local self-government.[13]

The following segment discusses in some detail the bills that were passed in the Assembly in 2020; the 16 bills passed in 2019 which came into force in 2020 are not the focus of analysis here. Legislative decisions that were the subject of significant contestation or controversy are discussed in greater depth in the next section.



State Revenue/Finance

Given that the pandemic put state finances under great stress, it comes as no surprise that the maximum number of legislations enacted through the year were to do with taxation and revenue. The AP Goods and Services Tax Act, 2017 was amended on the basis of recommendations of the thirty eighth GST Council meeting in December 2019.[14] The amendment introduced flexibility in compliance

13. The Andhra Pradesh Panchayat Raj (Amendment) Ordinance, 2020 (Ordinance 2 of 2020); the Andhra Pradesh Panchayat Raj (Second Amendment) Ordinance, 2020 (Ordinance 5 of 2020); the Andhra Pradesh Panchayat Raj (Amendment) Second Ordinance, 2020 (Ordinance 6 of 2020); the Andhra Pradesh Municipal Laws (Third Amendment) Ordinance, 2020 (Ordinance 17 of 2020).
14. The Andhra Pradesh Goods and Services Tax (Amendment) Act, 2020 (Act 22 of 2020).

requirements, made exceptions to accommodate the problems caused by the COVID lockdown and brought the AP statute in line with the already amended union Act.[15]

To make up for shortfalls in tax collection and the stress on the exchequer on account of unprecedented public health spending, states demanded and were permitted an additional borrowing space of two percent over the normal limit of three percent of Gross State Domestic Product for the year, subject to the required statutory amendments being made. The AP Fiscal Responsibility and Budget Management (Amendment) Act, 2020[16] was enacted towards this end. It must be noted, however, that only half of this additional two percent is unconditional,[17] while the remainder is contingent on 'reforms' brought in by the state in matters relating to the "universalisation of 'One Nation One Ration card', Ease of Doing Business, Power distribution and Urban Local Body revenues."[18] This is in keeping with a long history of the union government using the financial route to make incursions into state law and policy, with the Jawaharlal Nehru National Urban Renewal Mission being the most striking example in the recent past.[19]

In addition, three amendments were brought to AP Value Added Tax Act, 2005, increasing taxes on petrol and diesel,[20] revising tax rates on natural gas,[21] and introducing a road development cess.[22] While the first amendment was supported by the Council, it rejected the second and third amendments. They were enacted nonetheless per article 198 of the Constitution which limits the powers of the Council in relation to money bills.[23] Another amendment enacted to increase state revenue in a trying time, also rejected by the Council, was the AP Tax on Professions, Trades, Callings and Employments (Amendment) Act, 2020.[24] Noting that the professional tax collected had dropped 21.37 percent between 2019-2020, leading to an impact on disbursement of funds to local government under the Act, the amendment rationalised professional taxes within the constitutionally mandated ceiling limit of INR 2500 per annum.

An amendment to the AP Electricity Duty Act, 1939 was passed[25] to update its definition of a licensee, which was based on the Indian Electricity Act, 1910 and had not been updated in accordance with the Electricity Act of 2003. It also sought to give the government the power to revise the rate of duty based

15. The Finance Act, 2020 (Act 12 of 2020).
16. Act 34 of 2020.
17. The original scheme announced had only 0.5 percent unconditional. The union government changed it to one percent *vide* Press Information Bureau, "Borrowing options to meet the GST Compensation requirement for 2020-21", Ministry of Finance, Aug. 29, 2020, *available at*: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1649485 (last visited on March 5, 2022).
18. Press Information Bureau, "Finance Minister announces Government Reforms and Enablers across Seven Sectors under Aatma Nirbhar Bharat Abhiyaan", Ministry of Finance, May 17, 2020, *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=1624661 (last visited on March 5, 2022).
19. Anindita Mukherjee, *The Legal Right to Housing in India* 66-67 (Cambridge University Press, New Delhi, 2019). The AP government seemed to be unperturbed by this turn of affairs, however. It undertook the required 'reforms' with alacrity, becoming the first state to be eligible for additional borrowing. Bureau, "With second set of reforms, AP becomes first State to be eligible for 0.5% additional borrowing", *The Hindu Business Line*, Oct. 02, 2020, *available at*: https://www.thehindubusinessline.com/economy/with-second-set-of-reforms-ap-becomes-first-state-to-be-eligible-for-05-additional-borrowing/article32751233.ece (last visited on March 5, 2022).
20. The Andhra Pradesh Value Added Tax (Amendment) Act, 2020 (Act 23 of 2020).
21. The Andhra Pradesh Value Added Tax (Third Amendment) Act, 2020 (Act 41 of 2020).
22. The Andhra Pradesh Value Added Tax (Amendment) Ordinance, 2020 (Ordinance 12 of 2020) repealed and replaced by the Andhra Pradesh Value Added Tax (Second Amendment) Act, 2020 (Act 40 of 2020).
23. The Constitution of India, 1950, art. 198(5).
24. Act 42 of 2020.
25. The Andhra Pradesh Electricity Duty (Amendment)Bill, 2020 (LA Bill 30 of 2021).

on current consumption charges as is the practice in Maharashtra, Karnataka, West Bengal, Kerala etc., instead of the flat rate of six paise that had been in place since 1994. The bill was reserved for president's assent by the governor, since it dealt with a subject in the concurrent list.[26]

Agri/Aquaculture and Animal Husbandry

The state passed five legislations relating to agriculture, aquaculture and animal husbandry. This was amongst the areas in which several new statutes were enacted (as opposed to amendments). Andhra Pradesh currently leads the country in terms of coastal and freshwater aquaculture and efforts are on to improve its marine fishing industry.[27] Three statutes were enacted towards tapping into the economic potential of aquaculture in the state as well as organising the industry and regulating quality within it. The AP State Aquaculture Development Authority Act, 2020[28] was passed as the framework statute to achieve this end. In order to do so, it creates a nodal authority alongside a licensing system and a grievance redressal system. The AP Aquaculture Seed (Quality Control) Act, 2006 was accordingly amended[29] to mandate accreditation and licensing of hatcheries in the state in order to avoid in-breeding and low-quality seed production. The AP Fish Feed (Quality Control) Act, 2020[30] was passed to regulate the INR 17000 crore fish feed industry and control spurious practices. A similar law was also passed to regulate and lay down minimum standards for the animal feed industry.[31]

In December, Andhra Pradesh became the first state in the country to put in place a State Agricultural Council[32] along the lines of governing bodies for other professions like medicine and nursing. The Council is to regulate agricultural and horticultural education in the state, maintain professional standards, and streamline research and development.

Crime

Continuing from decisions made in 2019, when the government was elected to power, the state amended both the AP Excise Act, 1968[33] and the AP Prohibition Act, 1995[34] to include offences of bootlegging, conspiracy, etc. and give statutory legitimacy to the Special Enforcement Directorate set up towards bringing in gradual prohibition in the state. The move is said to have had mixed results (alongside the implementation of a prohibition tax and a steep increase in prices) with smuggling becoming rampant,[35] and prices being forced down after a few months of implementation.[36]

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26. It received the President's assent and came into force in 2021 (Act 10 of 2021).
27. S Guru Srikanth, "New harbours to put Andhra Pradesh on top in marine fishing", *The New Indian Express*, Nov. 23, 2020.
28. Act 29 of 2020.
29. The Andhra Pradesh Aquaculture Seed (Quality Control) (Amendment) Ordinance, 2020 (Ordinance 10 of 2020) repealed and replaced by the Andhra Pradesh Aquaculture Seed (Quality Control) (Amendment) Act, 2020 (Act 36 of 2020).
30. The Andhra Pradesh Fish Feed (Quality Control) Ordinance, 2020 (Ordinance 7 of 2020) repealed and replaced by Act 35 of 2020.
31. The Andhra Pradesh Animal Feed (Regulation of Manufacture, Quality Control, Sale and Distribution) Act, 2020 (Act 37 of 2020).
32. The Andhra Pradesh State Agricultural Council Act, 2020 (Act 38 of 2020); Staff reporter, "State takes the lead in setting up Agricultural Council", *The Hindu*, Dec. 3, 2020.
33. The Andhra Pradesh Excise (Amendment) Act, 2020 (Act 17 of 2020).
34. The Andhra Pradesh Prohibition (Amendment) Act, 2020 (Act 18 of 2020).
35. Sreenivas Janyala, "Andhra Pradesh: Illegal liquor trade on a high after prohibition, over 43,000 held in 3 months", *The Indian Express*, Aug. 31, 2020.
36. Srinivasa Rao Apparasu, "Jagan's policy of phased liquor prohibition goes for toss, prices drop to prevent smuggling", *Hindustan Times*, Oct. 30, 2020.

Responding to suicides amongst young people in the country who found themselves addicted to, or at the losing end of online gambling portals,[37] the government also amended the AP Gaming Act, 1974 to criminalise online gaming portals that allow for betting and gambling.[38] In addition, the government wrote to the union government asking it to block 132 apps identified as being platforms for the same.[39] The move was later emulated by the Tamil Nadu government. While the concern in relation to addiction and loss of money is real, the autocratic route of banning internet applications continues a troubling trend in Indian internet governance.

Land

The AP Assembly passed three bills relating to land and immovable property in the year. The AP Assigned Lands (Prohibition of Transfers) (Amendment) Act, 2020[40] carved out an exception to the prohibition of transfer of assigned lands in cases where the land is being acquired by the Andhra Pradesh Green Energy Corporation (APGECL). This is another significant step in the dilution of the statute, once created to prevent the acquisition of assigned lands, held by small and marginal farmers, by government and private entities.[41] At the same time, the state enacted an amendment to the AP Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006[42] allowing for the reconversion of land acquired by the APGECL for solar power plants to agricultural land. While neither bill saw any sustained opposition and they were passed quickly by the legislative council too, their simultaneous passage, despite seeming to be at cross-purposes, merits some interrogation. It is unclear from the Amending Act, for instance, as to who would own the reconverted agricultural land.

Since the YSRCP came to power in 2019, resurveying land across the state and streamlining the registration of immovable property and titling process has been squarely on their agenda. The AP Land Titling Bill, 2019[43] was introduced and passed by both Houses, only for the president to withhold his assent. In 2020, the bill with some amendments was passed again.[44] The governor referred it to the president a second time, and as yet it has not received the president's assent. The ostensible legal reason behind this is the fact that the statute seeks to create an independent dispute resolution system for title related disputes, not bound by the civil procedure code and outside the jurisdiction of civil courts.[45] The opposition leaders have argued that the resurveying effort is futile, it has been attempted

37. Press Trust of India, "Andhra Pradesh Passes Gaming Amendment Bill To Ban Online Games", *NDTV*, Dec. 02, 2020, *available at:* https://www.ndtv.com/india-news/andhra-pradesh-passes-gaming-amendment-bill-to-ban-online-gaming-2332856 (last visited on March 5, 2022); Jasvinder Sidhu, "IPL's Dark Side: A Rise in Suicide Cases Has Greeted the Return of Live Cricket on TV", *The Wire*, Oct. 23, 2020, *available at:* https://thewire.in/sport/ipl-betting-suicide-cricket (last visited on March 5, 2022).
38. The Andhra Pradesh Gaming (Amendment) Act, 2020 (Act 43 of 2020).
39. Press Trust of India, "Andhra Pradesh Bans Online Gaming, Betting; Asks Centre to Block Access to 132 Apps in State", *The Wire*, Oct. 30, 2020, *available at*: https://thewire.in/tech/andhra-pradesh-ban-online-gaming-betting (last visited on March 5, 2022).
40. The Andhra Pradesh Assigned Lands (Prohibition of Transfers) (Amendment) Ordinance, 2020 (Ordinance 11 of 2020) repealed and replaced by the Andhra Pradesh Assigned Lands (Prohibition of Transfers) (Amendment) Act, 2020 (Act 31 of 2020).
41. K Balagopal, "Land Unrest in Andhra Pradesh-I: Ceiling Surpluses and Public Lands" 42(38) *Economic and Political Weekly* 3829-3833 (2007).
42. The Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) (Amendment) Ordinance, 2020 (Ordinance 8 of 2020) repealed by Act 32 of 2020.
43. LA Bill 38 of 2019.
44. The Andhra Pradesh Land Titling Bill, 2020 (LA Bill 32 of 2020).
45. The AP Land Titling Bill, 2020, ss. 40, 41.

by previous governments to no avail, and that the bill should be withdrawn by the government.[46] The second iteration of the bill as introduced in 2020 is not accompanied by a statement of objects and reasons, but the 2019 draft makes its worrisome agenda quite clear:

> "In the present system of Deed Registration, documents relating to immovable property transactions are registered under the Registration Act, 1908, without any title verification. With India's rapid movement into the technological age, there is every need to introduce title registration system, which gives scope for growth in Land market with reduced litigation in courts and to ensure maximum utilization of land as a resource."[47]

The fact that a state with a significant adivasi population should seek to adopt this de Soto[48] inspired neo-liberal approach to land as a market commodity is disquieting. It ignores entirely the impact of easy access to title transfer on small and marginal holders of land whose bargaining power before large corporations or deep pockets is deeply unequal.[49] An alternate imagination for security of tenure, which does not buy so uncritically into illusory promises of a historically unfree free-market is necessary, especially for a government that seems to wish to portray itself as aligned with the interests of the most marginalised and impoverished communities in its state.

Education

In 2019, the government enacted the AP Higher Education Regulatory and Monitoring Commission Act.[50] It made news for its executive orders to make all government schools English medium[51] and rationalise fee structures in higher education institutions. These orders were challenged before the AP high court, as they came mid-year and had several contradictory provisions. Private engineering colleges went to court to protest against the alteration in the fee structure, while the government maintained that all it had done was prevent the heavy profiteering by said colleges.[52] In 2020, the government brought a retrospective amendment to the Act.[53] The amendment delineated the powers of the Commission (especially in relation to private and deemed universities) more clearly, alongside several other minor linguistic changes to clarify the intent of the statute. The most significant reason for its retrospectivity, however, was to validate the fee structure fixed by the Commission for the year 2019-2020 (which the Court had suspended in its interim order). The government justified the retrospective amendment on the grounds that it was both in the interest of students and in public interest. The petition by the private engineering colleges was subsequently withdrawn.

Buttressing the impetus that the government wishes to give to the aquaculture industry in the state, the AP Fisheries University Act, 2020[54] was also passed to structure research and education in the subject.

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46. "Atchannaidu urges Jagan govt in Assembly to withdraw AP Land Titling Bill", *available at*: https://www.ap7am.com/lv-340544-atchannaidu-urges-jagan-govt-in-assembly-to-withdraw-ap-land-titling-bill (last visited on March 5, 2022).
47. The Andhra Pradesh Land Titling Bill, 2020, Statement of Objects and Reasons.
48. Hernando de Soto, *The mystery of capital: Why capitalism triumphs in the West and fails everywhere else* (Basic Books, 2000).
49. Olivier De Schutter, "The Role of Property Rights in the Debate on Large-Scale Land Acquisitions", in Christophe Gironde, Christophe Golay, et. al. (eds.), *Large-Scale Land Acquisitions: Focus on South-East Asia* 53-80 (Brill Nijhoff, 2016).
50. Act 20 of 2019.
51. G.O.Ms. No.85, SE (Prog.I) Dept. dated Nov. 20, 2019.
52. *See* order dated May 7, 2020 in WP No. 8266 of 2020.
53. The Andhra Pradesh Higher Education Regulatory and Monitoring Commission (Amendment) Act, 2020 (Act 16 of 2020).
54. Act 39 of 2020.

Religious Establishments

The state passed two strangely pacificatory amendments to the AP Charitable and Hindu Religious Institutions and Endowments Act, 1987 in 2020. The first[55] exempted eight prominent Hindu temples from the application procedure for the appointment of trustees on the grounds that the process kept "truly deserving prominent pious persons, donors, etc." from being appointed.[56] The second amendment[57] restored the hereditary rights (which the original statute abolished) of the Sannidhi Yadava community in relation to the Tirumala Tirupati Devasthanams.

A Note on Statutes Passed in 2019 that Came into Force in 2020

Since the Andhra Pradesh Assembly went to polls in 2019, a significant chunk of the legislative activity of the newly elected government happened in the latter half of the year, leading to 16 statutes passed in 2019 coming into force in 2020. Of these, five were to do with the educational reforms that the government was keen to bring in, two each to do with revenue, agri/aquaculture and crime (relating to the phased prohibition agenda). There was also an amendment to the Co-operative Societies Act, 1964 to delete the provision that barred "a deaf-mute or a leper" from being part of committees under the statute. The AP State Commission for Scheduled Tribes Bill, which had been reserved for the president's assent received it only in 2020.[58]

Contentious Decisions

Trifurcation of the Capital

The bifurcation of the erstwhile state of Andhra Pradesh left the newly formed state with no capital city. The first Chief Minister, Chandrababu Naidu, embarked on an ambitious and sharply criticised project to build a world-class capital in Amravati. In order to do so, the AP Capital Region Development Authority Act was enacted in 2014,[59] and a land pooling scheme put in place through which farmers would trade in their agricultural land for the promise of a developed (smaller) plot in the capital city and an annual rent for a decade.[60] Many farmers did so willingly, others were forced to when their challenge to the scheme failed in the courts.[61] However, on being elected into power in 2019, the YSRCP seemed to have different plans. The first two bills tabled in the Assembly in 2020 were to repeal the AP Capital Region Development Authority Act,[62] and to put in place a decentralised, trifurcated capital

55. The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Ordinance, 2020 (Ordinance 1 of 2020) repealed and replaced by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2020 (Act 25 of 2020).
56. The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Bill, 2020 (LA Bill 3 of 2020), Statement of Objects and Reasons.
57. The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Second Amendment) Act, 2020 (Act 26 of 2020).
58. Its counterpart statute for Scheduled Castes took longer, and received the President's assent in 2021. With this, the Commissions stand bifurcated, in line with the National Commissions.
59. Act 11 of 2014.
60. The Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules 2015 issued in G.O.Ms. No.1, Municipal Administration & Urban Development (M2) Department, dated Jan. 1, 2015.
61. Sruthisagar Yamunan, "They gave up farmland for new Andhra capital. Now they are crippled with uncertainty" *available at*: https://scroll.in/article/951454/they-gave-up-farmland-for-new-andhra-capital-now-they-are-crippled-with-uncertainty (last visited on March 5, 2022).
62. The Andhra Pradesh Capital Region Development Authority Repeal Bill, 2020 (LA Bill 2 of 2020).

with the legislature, executive and judiciary sitting in different cities.[63] The stated reason for the same was to avoid the creation of a 'honeypot' city and to decentralise development in the state.[64] Two days later, the Assembly also passed a resolution on the basis of a cabinet sub-committee's report, initiating an investigation into insider trading in land in Amravati.[65] The report noted that over 4000 acres of land had been bought by private individuals and associations prior to the announcement that Amravati was to be the next capital. In the FIR that ensued, family members of a sitting judge of the supreme court were mentioned,[66] and the AP government alleged that the courts were making it impossible for the state machinery to function on account of powerful vested interests.[67]

The legislative council, in which the YSRCP does not have a majority, opposed the two bills. In response to this opposition, the Assembly resolved to abolish the Council altogether.[68] In the meantime, farmers who had given up their lands willingly took up an agitation against the government decision since the trifurcation would necessarily reduce the scale of development planned at Amravati and put them at a disadvantage.[69] In May 2020, the two bills were reintroduced and deemed to be passed by the legislative council since it was the second time they had been introduced and passed by the Assembly.[70] They received the governor's assent on July 31, 2020[71] amidst wide-spread protest and while the high court was already hearing petitions against the proposal.[72]

The episode raised many important questions about urban planning practices, new forms of land acquisition that bypass compensation and consent requirements, and the degree to which new governments are bound by the decisions of their predecessors. It also raises institutional questions in terms of independence *of* and *from* the judiciary and the function of bi-cameral legislatures in states, given the significantly lesser powers of the legislative council within the constitutional scheme.

Amendments to Local Self-Government Laws

Of the 17 ordinances promulgated in 2020, six were amendments to laws relating to municipal corporations and panchayats. The relatively uncontroversial ones sought to increase property tax in line with that in neighbouring states,[73] increase the powers and responsibilities of panchayats[74] and

63. The Andhra Pradesh Decentralisation and Inclusive Development of All Regions Bill, 2020 (LA Bill 1 of 2020).
64. The Andhra Pradesh Capital Region Development Authority Repeal Bill, 2020 (LA Bill 2 of 2020), Statement of Objects and Reasons.
65. AP Legislative Assembly, Resolution on Insider Trading, Jan. 22, 2020.
66. The Wire Staff, "Andhra Land Scam FIR Names Daughters of Supreme Court Judge", *The Wire*, Nov. 25, 2020, *available at:* https://thewire.in/government/andhra-land-scam-fir-supreme-court-judge-amaravati (last visited on March 5, 2022).
67. Scroll Staff, "Andhra Pradesh CM writes to CJI, alleges SC judge NV Ramana influencing High Court", *available at*: https://scroll.in/latest/975492/andhra-pradesh-cm-writes-to-cji-alleges-sc-judge-nv-ramana-influencing-high-court (last visited on March 5, 2022).
68. AP Legislature, Resolution on Abolition of Legislative Council, Jan. 27, 2020.
69. *Supra* note 61.
70. The Constitution of India, 1950, art. 197(2).
71. The Andhra Pradesh Capital Region Development Authority Repeal Act, 2020 (Act 27 of 2020); the Andhra Pradesh Decentralisation and Inclusive Development of All Regions Act (Act 28 of 2020).
72. By the end of 2021, the government agreed to re-examine the issue, but the court chose to rule on legislative competence nonetheless. In March 2022, the court held that the government was bound by the original plan, and could not go ahead with the move to trifurcate. The Assembly also resolved to withdraw its earlier resolution seeking the abolition of the legislative Council, since the Union government had not taken necessary action in over a year and half, leaving the House in a state of disarray, essentially bringing things back to square one.
73. The Andhra Pradesh Municipal Laws (Second Amendment) Ordinance, 2020 (Ordinance 16 of 2020).
74. The Andhra Pradesh Panchayat Raj (Amendment) Ordinance, 2020 (Ordinance 2 of 2020).

municipal corporations,[75] alter administrative boundaries of urban local bodies[76] and alter timelines for elections to local bodies.[77] These were absorbed into legislation in 2020 and 2021.

The Andhra Pradesh Panchayat Raj (Second Amendment) Ordinance, 2020,[78] however, came under intense scrutiny for enacting what seems like political vendetta through the law. The Amendment altered the terms of office of the State Election Commissioner (SEC), reducing their term to three years from five, and requiring the SEC to be retired judge of a high court. Most significantly, the ordinance abruptly ended the term of the (then) current SEC with immediate effect. This came hot on the heels of the state government locking horns with the Election Commission over its move to postpone elections to local bodies.[79] The ordinance was challenged before the AP high court and struck down[80] on the grounds that it ran afoul article 243K (2) which states:

> "Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment"[81]

In this case, the HC held, that the ordinance amounted to unauthorised removal from office and that the term 'conditions of service and tenure of office' does not include pre-conditions for appointment. As a consequence, the SEC was reinstated. However, despite the SEC's earlier position in favour of postponement, elections to local bodies were subsequently held.

Disha Act

The rape and murder of a young veterinarian in Hyderabad in November 2019 shook the collective conscience of the nation, leading to the custodial murder of four 'accused' by the Telangana police[82] and a knee-jerk legislative response by the Andhra Pradesh government. The AP government introduced two bills on this front: the first, an amendment to criminal laws mandating death sentence for particular kinds of offences against women and children;[83] and the second, a statute to create exclusive special courts for speedy trial of specified offences against women and children.[84] The president withheld assent to the latter,

75. The Andhra Pradesh Municipal Laws (Amendment) Ordinance, 2020 (Ordinance 3 of 2020).
76. The Andhra Pradesh Municipal Laws (Third Amendment) Ordinance, 2020 (Ordinance 17 of 2020).
77. The Andhra Pradesh Panchayat Raj (Amendment) Ordinance, 2020 (Ordinance 2 of 2020); the Andhra Pradesh Municipal Laws (Amendment) Ordinance, 2020 (Ordinance 3 of 2020).
78. Ordinance 5 of 2020.
79. Gali Nagaraja, "Jagan Govt Promulgates Ordinance to Remove State's Election Commissioner", *The Wire*, April 11, 2020, *available at*: https://thewire.in/government/andhra-pradesh-ramesh-kumar-state-election-commissioner (last visited on March 5, 2022).
80. *N Ramesh Kumar* v. *State of Andhra Pradesh*, WP No 8163 of 2020 *decided on* May 29, 2020.
81. The Constitution of India, 1950, art. 243K.
82. Marri Ramu, "Probe into Disha case encounter begins", *The Hindu*, Feb. 3, 2020.
83. The Andhra Pradesh Disha Bill - Criminal Law (Andhra Pradesh Amendment) Bill, 2019 (LA Bill 47 of 2019).
84. The Andhra Pradesh Disha Bill - Andhra Pradesh Special Courts for Specified Offences against Women and Children Bill, 2019 (LA Bill 46 of 2019).

leading to it being withdrawn and reintroduced in 2020[85] with alterations recommended by the government of India. This bill too has been reserved by the governor for the president's consent, which is pending.

Though the focus has been on the speedy trial statute, the mandatory death penalty response to any incidence of gruesome violence remains both counterproductive and troubling.[86] As per the records on the AP Legislature website, the AP Disha Bill - Criminal Law (Andhra Pradesh Amendment) Bill, 2019 has been passed by both Houses but has not yet come in force. The government must be called on to expressly withdraw it.

Resolution against NPR

In an act of federal assertion, the Assembly moved a resolution[87] to ask the central government to revert to the 2010 format of data collection for the census, since the addition of new columns pertaining to parents' place of birth, mother-tongue etc. is causing "fear, apprehensions and insecurities in the minds of the people of Andhra Pradesh" and has "led to unnecessary confusion and lack of trust among the public to the extent of impinging on public order." The House also expressly reiterated its "principled stance against the National Register of Citizens (NRC)."

A Note on Access to Information

Since coming to power, the current AP government has taken a public position against making government decisions (whether legislative or executive) easily accessible online.[88] The ostensible reason for doing this is to avoid 'frivolous' public interest litigation that 'hampers' the ability of the government to make decisions. This move from an automated system by which all public government directives were uploaded directly to a designated website, to a department-based offline system has significant repercussions for research. For example, the official AP legislature website lists 11 ordinances promulgated in 2020 (without the text of the ordinances being made available), while a search on the AP Government Order Issue Register (GOIR) shows that 17 were in fact promulgated. The PDFs associated with the entries on the GOIR are single page documents saying that the ordinance is appended (but is not). The gazette website does not list any ordinances at all for the period, while publication in the gazette is mandatory. This method of maintaining data makes research a cat-and-mouse game, rendering analysis fraught with the possibility that chunks of data might have been missed out altogether. Accessing government decisions in their physical form (across different departments)

85. The Andhra Pradesh Disha (Special Courts for Specified Offences against Women and Children) Bill, 2020 (LA Bill 31 of 2020).
86. Sahana Manjesh, "Why The Death Penalty Is Not A Solution To India's Rape Problem", *available at*: https://www.article-14.com/post/why-the-death-penalty-is-not-a-solution-to-india-s-rape-problem (last visited on March 5, 2022); Jahnavi Sen, "Seven Reasons Why We Shouldn't Demand the Death Penalty for Rape", *The Wire*, Nov. 25, 2021, *available at*: https://thewire.in/women/rape-death-penalty (last visited on March 5, 2022).
87. AP Legislative Assembly, Resolution on National Population Register (NPR), June 17, 2020.
88. "However, with litigants using the GOs to hamper the planning of the state government by challenging them in courts, the government is said to have taken the decision not to upload the GOs in the portal.

    Though the question of transparency is being raised with the move, a senior official told TNIE that the decision will enable the government to proceed with its planning. "As of now, immediately after GOs are issued, litigants without verifying the real intentions of the government knock the doors of courts challenging the government attributing their own intentions, thereby wasting time," he said." Express News Service, "Separate records for 3 different series of government orders in Andhra Pradesh", *The New Indian Express,* Aug. 18, 2021.

is complex terrain, with variables like identity, political affiliations and the predilections of officials in charge playing an integral role in whether access is permitted.

In addition, the documents that are in fact uploaded on the AP legislature website are scanned image files, with parts missing (like the last few lines on several pages). Uploading public documents in this fashion renders them inaccessible to screen-readers and, hence, is disability unfriendly. In terms of language too, there is a marked absence of uniformity. Most bills uploaded have Telugu translations accompanying them, while none of the Acts that were finally passed do. Systematic data archiving practices that foreground accessibility and accountability must be demanded in relation to public data. Without this, the maxim *ignorantia juris non excusat* takes on a sinister tone.

Conclusion

The year 2020 was, in many ways, a year of disasters for Andhra Pradesh. The effect of the pandemic was compounded by a flood,[89] a cyclone,[90] an outbreak of a mysterious illness[91] and a massive gas leak.[92] The legislative activity of the state does not speak to this reality, however. On the surface, it would seem that the year was not executive driven, seeing as legislative activity did not flag on account of the reduced number of sitting hours and the ordinances that were promulgated were also tabled promptly before the Assembly. But closer analysis shows that the government chose the legislative route primarily in contexts where on account of either judicial pressure or the requirements of the parent statute, actions could not be undertaken through executive orders. For example, amendments to taxation and revenue statutes were made to increase state revenue, but the substance of the pandemic relief work that the government undertook was transacted entirely through government orders and directives. While this may seem understandable in the context of an emergency where swift changes in decisions may be required, it also makes it harder to hold the state to account for its decisions (especially given the charges of selective release of public information being levelled against it).

In sum, this analysis of the AP government's legislative practice through 2020 shows a marked absence of robust democratic engagement, with little productive debate in the Assembly, a strong autocratic inclination to obscure data and the troublesome tendency to view dissent as an irritant. This is to not to say that the substance of the government's interventions was always problematic—indeed, certain schemes announced were laudable—but, that there persists a distrust of the democratic process as being an inefficient obstruction to governance, perhaps more so in governments that are elected to power with absolute majorities.

89. Express News Service, "Flood grips 20 mandals in East and West Godavari districts", *The New Indian Express*, Aug. 18, 2020.
90. P Samuel Jonathan, "Cyclone Nivar | Battered fields, shattered dreams in Andhra Pradesh", *The Hindu*, Dec. 7, 2020.
91. "Andhra Pradesh: 'Mystery' illness puts hundreds in hospital", *available at*: https://www.bbc.com/news/world-asia-india-55209763 (last visited on March 5, 2022).
92. Scroll Staff, "Visakhapatnam: At least 11 dead after gas leak at chemical plant, over 200 hospitalised", *available at*: https://scroll.in/latest/961241/visakhapatnam-at-least-three-dead-after-gas-leak-at-chemical-plant-many-unconscious-say-reports (last visited on March 5, 2022).

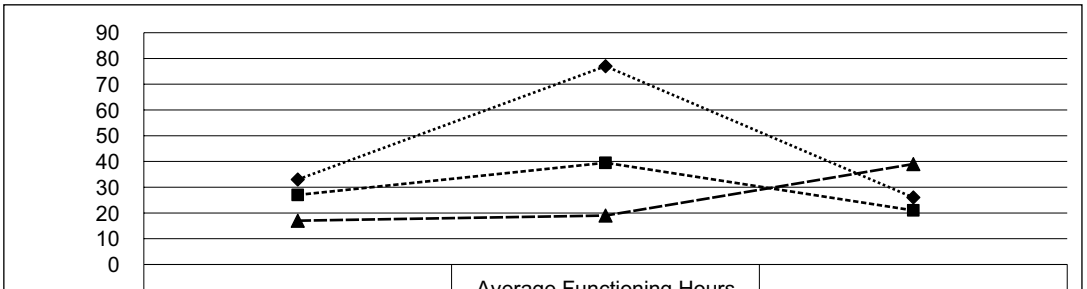
ASSAM

Pritam Baruah[1] and Manash Pratim Dutta[2]

Introduction

Surprisingly for a year struck by the pandemic, 2020 witnessed unusually hectic activity in the Assam state legislative assembly (the Assembly) during its fourteenth meeting. A total of 44 bills were introduced and passed over four sessions. Thirty-nine bills were passed as Acts. The sessions commenced with a special meeting on January 13, followed by the budget session in March, the autumn session in August, and the winter session in December. Though the sessions were held in their usual period during the year, they were significantly short and had very low functioning hours.

Compared with earlier years, in 2019, only 21 bills were passed. In contrast to the non-pandemic year of 2018 too, 2020 stands out: only 26 bills were passed in 2018. One would presume that, having passed almost double the number of bills in 2020, the Assembly would have witnessed increased working hours. However, the number of functioning days of the Assembly was less than in other years. In 2020, the Assembly had a total of 17 functioning days with an average of 19 functioning hours per session. In 2019, the number of functioning days stood at 27 with an average of 39.5 working hours per session, while in 2018 and in 2017, it was 33 days with 77 hours per session, and 31 days with 45.6 hours per session respectively. The number of sittings and reports presented in committees in 2020 stood at 12.[3] Figure 1.1 depicts tabular and graphical representation of information.



	Functioning Days	Average Functioning Hours per session	Acts Passed
2018	33	77	26
2019	27	39.5	21
2020	17	19	39

Figure 1.1

1. Professor and Dean, School of Law, BML Munjal University, Gurugram, Delhi NCR.
2. Research Associate, OKD Institute of Social Change and Development, Guwahati.
3. Information from the website of PRS Legislative Research and the Journal of Parliamentary Studies, Vol. LXVI, *available at*: https://prsindia.org/legislatures/states/functioning-of-assam-14th-assembly-2016-2021 (last visited on Jan. 31, 2022).

Therefore, 2020 was, indeed, quantitatively exceptional: the Assembly passed a higher number of Acts in fewer functioning hours than it did in the last three years.

Thirty five percent of the Acts passed in 2020 involved social welfare measures and 35 percent involved law and order regulations. Legislations relating to socio-cultural, educational and state-financial affairs were 13 percent, 20 percent and 25 percent respectively. These categories are not entirely independent- as there are significant overlaps. At least 14 of the bills could be considered to be related to public demands for legislation[4].

Ordinances

Out of 44 bills, 39 became Acts in 2020. However, there were five bills that were introduced in the Assembly in 2020 but were not passed due to time-constraints. Four bills that were not passed through the Assembly became ordinances through the exercise of power by the governor: the Factories (Assam Amendment) Ordinance, 2020; the Factories Assam Second Amendment Ordinance, 2020; the Assam Agricultural Produce and Livestock Marketing Promotion and Facilitation Ordinance, 2020; and the Assam Contract Labour (Regulation & Abolition) Act, 2020. The Assam Motor Vehicle Taxation (Amendment) Bill, 2020 was re-introduced in 2021 and become an Act in 2021.

An Election Dominated Year

Two thousand and twenty was the year prior to the fifteenth Assam quinquennial legislative assembly election. The incumbent government was expected to roll out electorally relevant policies and bills. The Acts passed in 2020 underscore this expectation. In this article, we provide an analysis to the effect that roughly 44 percent of the Acts passed in 2020 were aimed at addressing electorally relevant issues primarily through the lenses of ethnic identity, linguistic nationalism, and religious polarisation. For example, the Assam Heritage (Tangible) Protection, Preservation, Conservation and Maintenance Act, 2020 and the Assamese Language Learning Act, 2020 were aimed at addressing longstanding demands promised in the Assam Accord and demands of regionalist/Assamese-nationalist groups respectively. Similarly, the Kamatapur Autonomous Council Act, 2020, the Matak Autonomous Council Act, 2020, the Moran Autonomous Council Act, 2020 and their subsequent Amendment Acts were passed for providing autonomy and sixth-schedule benefits to electorally relevant ethnic groups. These legislative initiatives also came in with the agenda of controlling the simmering discontent over the Citizenship Amendment Act, 2019 (CAA), which benefitted the government in the 2021 elections.

Electoral motivation for legislative activity is additionally demonstrated by the Assam Repealing Act, 2020, enacted to withdraw state support and regulation of madrassas, that invited allegations of religious polarisation. Even Acts setting up new universities such as the Birangana Sati Sadhani Rajyik

4. The Assam Heritage (Tangible) Protection, Preservation, Conservation and Maintenance Act, 2020; the Assam Skill University Act, 2020; the Assamese Language Learning Act, 2020; the Birangana Sati Sadhani Rajyik Vishwavidyalaya Act, 2020; the Kamatapur Autonomous Council Act, 2020; the Matak Autonomous Council Act, 2020; the Moran Autonomous Council Act, 2020; the Assam Inland Water Transport Regulatory Authority Amendment Act, 2020; the Assam Non-Government Educational Institutions (Regulation of Fees) (Amendment) Act, 2020; the Bodo Kachari Welfare Autonomous Council Act, 2020; the Assam Micro Finance Institutions (Regulation of Moneylending) Act, 2020; the Assam Ease of Doing Business (Amendment) Act, 2020; the Assam Education (Provincialisation of Services of Non-Teaching Staff of Venture Educational Institutions) (Amendment) Act, 2020 and the Assam Official Language (Amendment) Act, 2020.

Vishwavidyalaya Act, 2020 was underscored by explicit messaging towards the Chutia community. Though several pre-poll promises were followed up through legislative activity, some key demands and promises were dropped due to disagreement between social groups. The electoral focus of legislative activity was also visible in education and social welfare. Important legislative initiatives on these fronts were packaged with signals of majority appeasement as is seen in the Assam Repealing Act, 2020 in which electoral promises included repealing of government support to madrassas as well as support to *Sanskrit Tols*. The bills passed were, however, limited to the repealing of madrassas.

Apart from considering the spectre of the elections to be held in 2021, several bills specifically responded to the COVID-19 pandemic and the ensuing lockdown. A total of four Assam Appropriation Acts were passed in 2020 that amended the ways government can borrow or spend capital.

In what follows, we provide a brief qualitative analysis of the Acts under the following categories: creation of autonomous district councils, the Repealing Acts, laws relating to education and social welfare.

Creation of Autonomous District Councils: Social Factionalism for Political Control

The Assembly passed three Acts constituting three new autonomous district councils (Councils) for Moran, Matak and Koch-Rajbongshi communities in the state.[5] Councils are unique governmental arrangements under the sixth schedule to the Constitution of India and reflect several elements of asymmetric federal arrangements. The Councils enjoy considerable powers of law-making, administration, and adjudication contrary to the decentralized arrangement of *Panchayats*. Their law-making powers include allotment, occupation and use of land, forest management and administration of public health and sanitation. Some Councils exercise greater powers in areas such as industries, agriculture, communication and education.[6] The demand for the creation of councils has been very high amongst educated sections of tribal communities in Assam as well as in the neighbouring states.

Unlike *Panchayats*, Councils are not exclusively territorial in nature but are created to protect specific tribal communities. Creation of Councils was a long-standing demand from the Moran, Matak, and Koch-Rajbongshi communities. However, the communities had also demanded Scheduled Tribe (ST) status. In fact, both the Congress and the BJP had incorporated their demand for ST status along with that of three other communities in their manifestoes for the 2021 elections. This demand was however not honoured by the three Acts passed since there was severe opposition from other ST communities. The three Acts creating the new councils were tabled on March 24, 2020, the last day of the budget session and passed in the next session in September 2020. They received the governor's assent on October 12, 2020. No significant discussion preceded the passing of these bills. It is also pertinent that the three communities concerned were active participants in the anti-CAA movement in Assam. Political commentators converge on the opinion that the three bills were tabled at the height of these protests due to the post-

5. The Kamatapur Autonomous Council Act, 2020; the Matak Autonomous Council Act, 2020 and the Moran Autonomous Council Act, 2020. The nomenclature of the Koch-Rajbongshi's stands out as the Council in its case is not named after the community but the Kamatapur area of the state.
6. The Constitution of India, 1950, Sixth Schedule, paras 1, 3-A and 3-B.

CAA political turmoil in Assam.[7] As such these bills seem like a way to garner electoral support for the oncoming elections on the one hand and to deflate the anti-CAA movement on the other.

The powers conferred to the three new Councils, as well as the language of the provisions, are identical.[8] Unlike some district councils such as those in Karbi Anglong and North Cachar Hills, the three new Councils have been granted no specific powers tailored to the context of the three communities.

In addition to the Acts constituting the three Councils, the Assembly also passed the Bodo Kachari Welfare Autonomous Council Act, 2020 that was notified on January 30, 2021. The legislation created a Welfare Autonomous Council for members of the Bodo Kachari community who resided outside other sixth schedule areas. The powers of the council here are also identical to the other three statutes.

Overall, the legislative initiatives in creating these councils follow a well-established trend in Assam of creating such councils to cater to the demands of educated elites with an eye on electoral benefits. These councils create new administrative posts with the power to impose tolls and taxes, receive government grants, and pursue welfare and sociocultural measures. They are significant centres of political and monetary power. The success of the three autonomous council bills in garnering electoral support for the ruling party, despite the anti-CAA movement, demonstrates yet again that such Councils are successful in breaking up pan-Assam sociopolitical movements by providing material incentives to focus only on distinct ethnic communities. An upshot of this strategy is that the social bonds of the state become fractured along ethnic lines, but the political control of governments over communities becomes more effective through administrative and financial channels. It is a curious case of social disunity contributing to politico-administrative unity.[9]

The Assam Repealing Act, 2020: Signals of Majoritarian Appeasement and Acontextual Law-Making

In December 2020, the Assam Repealing Act, 2020 was tabled in the Assembly. It received the governor's assent in January 2021. The statute repealed the Assam Madrassa Education (Provincialisation) Act, 1995, and the Assam Madrassa Education (Provincialisation of Services of Employees and Re-Organisation of Madrassa Educational Institutions) Act, 2018. With this move the Assembly effectively ended public funding and regulation of madrassas. The move is significant as Assam is the state with the highest population of Muslims as a minority. According to the 2011 census, Muslims comprise 34.22 percent of the population of Assam.

Through the Assam Madrassa Education (Provincialisation) Act, 1995 all madrassas in Assam were provincialized, i.e., their control was taken over by the government and its managing committees or governing bodies were to be reconstituted according to the provisions of the Act. Section 3 of the Act

7. Chandan Kumar Sarma and Obja Borah Hazarika, "Anti-CAA Protests and State Response in Assam: Identity Issues Challenge Hindutva-Based Politics" 55(14) *EPW Engage* (2020). *See also*, Ayan Sharma, "Upper Assam saw the most violent CAA protests. Why is BJP still leading the fray?", *Newslaundry*, March 24, 2021, *available at*: https://www.newslaundry.com/2021/03/24/upper-assam-saw-the-most-violent-caa-protests-why-is-bjp-still-leading-the-fray (last visited on Feb. 01, 2022); Amarjyoti Borah, "Assam Poll: How BJP Contained Political Impact of Anti-CAA Stir", *The Quint,* March 26, 2021, *available at*: https://www.thequint.com/assam-elections/anti-caa-protest-impact-bjp-assam-election-first-phase-of-polling (last visited on April 17, 2022).
8. See chapter III of the respective Acts for the provisions conferring powers on the Council.
9. Pritam Baruah and Nicolas M Rouleau, "Democracy, Representation, and Self-Rule in the Indian Constitution" 44(2) *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America* 177-195 (2011).

provided that all employees of madrassas covered by the deficit scheme of grants-in-aid of the government of Assam were deemed to be employees of the government of Assam. All rules for government employees were applicable to them, and so were the emoluments and allowances of government employees. Their immediate pays were protected under the Act, and they received pension and gratuity as per government norms.[10] Norms of selection and appointment were also regulated by the Act. Ownership of the properties of the madrassas, however, remained with the madrassas.[11] In effect, the functioning of madrassas and their employees were provincialized by the 1995 Act. In 2018, the Act was amended to bring within its fold 'venture' madrassas functioning in the state that were previously governed by the Assam Venture Madrassa Educational Institutions (Provincialisation of Services) Act, 2014.

Repealing of the 1995 and 2018 acts has removed government control over as well as support to state-run madrassas.[12] There are 729 state-run madrassas in the state in addition to several privately run ones.[13] State-run Madrassas regulated by the government's education norms, provided both Islamic and general education. Private madrassas on the other hand have no obligation to provide general education and several of them provide purely religious education.[14] State-run madrassas were a choice for girls as parents, due to the pressure of social norms, wish them to have both religious and general education. In this sense, state-run madrassas were a valued instrument of enabling girls to access general education despite the prevailing patriarchal and religious norms against women's education. The provincialisation of madrassas was, therefore, a valuable and context-sensitive social innovation that created an avenue for gradual change in the educational landscape by making secular education possible without building religious opposition.

The sudden and immediate removal of state support and regulation by the Repealing Act ends this unique social innovation without any public consultation or debate. If the previously state-run madrassas cannot find viable financial resources to stay afloat, several thousand Muslim students, especially girls, will lose access to a mode of education that was socially sustainable as well as a gateway to the world through the secular education recognized by the state board.

Though the legislation does not provide any justifying reasons for the repeals, statements by ministers and higher education officials indicate that the move towards general education by closing down of state-run madrassas is beneficial for the state as, now, general and secular education would be the norm. Such justifications are, however, too general and thin as they do not consider its impact on the students, staff, and access to education. The state government did not refer to any detailed study or committee reports in drafting this bill. This is precisely the kind of issue where a detailed study of the impact of deregulation of madrassas would have benefitted the wisdom of the legislature. In fact, the government rejected a demand from Congress and AIDUF MLAs to send the bill to a select committee for further scrutiny.[15]

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10. The Assam Madrassa Education (Provincialisation) Act, 1995, s. 4.
11. *Id.,* s. 10.
12. The constitutionality of the Repealing Act was challenged before the Gauhati High Court and its constitutionality was upheld.
13. Special Correspondent, "Assam Madrassas Turn General Schools", *The Hindu*, Feb. 04, 2021, *available at:* https://www.thehindu.com/news/national/other-states/assam-madrasas-turn-general-schools/article33744247.ece (last visited on April 17, 2022).
14. Makepeace Sitlhou, "In Assam, ban on state-run Madrassas may force girls to drop out", *Aljazeera*, March 11, 2021, *available at:* https://www.aljazeera.com/features/2021/3/11/shut-down-of-madrasas-in-indias-assam-could-see-girls-drop-out (last visited on Oct. 31, 2021).
15. Abhishek Saha, "Assam passes Bill to turn madrasas into regular schools", *The Indian Express,* Feb. 18, 2022, *available at*: https://indianexpress.com/article/north-east-india/assam/assam-passes-bill-to-turn-madrasas-into-regular-schools-7126938/ (last visited on Oct. 30, 2021).

Newspaper reports and commentaries suggest that without access to the state-run madrassas, girl students would suffer significantly as several of them would have to travel to private madrassas which may not offer general education. Religious and patriarchal prejudice prevalent in society will be indirectly bolstered as their cultural norms prefer Muslim girls to have religious education. Since general schools do not provide religious education, parents with orthodox religious beliefs would be disincentivised from sending girls to schools.

Citing the Sachar Committee report, defenders of the Repealing Act have argued, that religious education leads to ghettoisation and, thus, the Repealing Act is a welcome move that would push for general education amongst Muslims. Such a conclusion is too quick and almost naive. It fails to appreciate the fact that regulation of madrassas acted as a realistic gateway to general education even for students from orthodox religious backgrounds. In effect, the repealing law closes this gateway and holds the potential of incentivising ghettoisation. Orthodox religious norms may now act as barriers to education, especially for girls. As the state recedes from madrassa-education, it is highly likely that socio-cultural and religious norms will occupy the space left by any economic or other secular incentive to substitute pure religious education. The Assam Repealing Act, 2020, therefore, betrays the contextual nature of a legislative action motivated by electoral considerations rather than considerations relevant to the issue of state regulation of religious education. By washing its hands of, the state has lost an opportunity to integrate religious and secular education that holds the promise of building a secure constitutional future for a multicultural state. It is for this reason that several MLAs criticized the move as one incentivising religious polarization.[16]

The allegation that it is electoral concerns that motivated the repealing of the Act is not misplaced. Prior to the 2021 elections, leaders of the ruling party including those holding governmental posts spoke of the deregulation of madrassas along with policies for Sanskrit *Tols*. Media outlets reported that, in December 2020, there was a proposal approved by the cabinet for the closing down of Sanskrit *Tols*. However, it was also reported that there was support for the view of transferring the *Tols* to the Kumar Bhaskar Varma Sanskrit and Ancient Studies University where *Tols* would be converted to centres for learning and research in Indian culture, civilization, and nationalism.[17] When the bill was tabled, however, any reference to Sanskrit *Tols* was missing. The promise of state support to *Tols* remains an open question.

Education: A Trend toward Executive Control and Furthering of Central Policies

There were seven Acts passed in 2020 that made changes in the education sector of Assam. The Assembly passed two bills establishing two new universities: the Assam Skill University in Mangaldoi, and the the Birangana Sati Sadhani Rajyik Vishwavidyalaya in Golaghat. The Skill University Act is established with the objective to promote skill-based education and entrepreneurship. The preamble of the Act states that the university would promote research in emerging areas such as agriculture, food

16. Press Trust of India, "Assam government table bill to abolish all state-run Madrassas", *The Hindustan Times,* Dec. 28, 2020, *available at*: https://www.hindustantimes.com/india-news/assam-goverment-tables-bill-to-abolish-all-state-run-madrassas/story-XrDnZqSb9N6WPrZqjv4IcN.html (last visited on April 17, 2022).
17. *Ibid. See also*, Editorial, "All the same: madrassa, Sanskrit tols", *The Telegraph,* Dec. 17, 2020, *available at*: https://www.telegraphindia.com/opinion/all-the-same-madrasa-sanskrit-tols/cid/1800733 (last visited on Oct. 31, 2021).

processing, chemicals, plastics, petrochemicals, textile, design, logistics, automation, healthcare and tourism. The Act also employs language reflecting the vision of the National Education Policy (NEP). For example, it aims to provide opportunities for 'flexible learning systems and skill development', and 'to frame credit framework for competency-based skill and vocational education.'

The Skill University has been accorded priority over other universities through a notwithstanding clause whereby any college or institution situated within the limits of the Skill University, but affiliated to any other university, shall be deemed to be associated with and admitted to the privileges of the Skill University as and when the state government notifies a date to that effect. Unlike other state universities, where the governor is usually the chancellor, the chief minister of Assam is the chancellor of the Assam Skill University. Such a move is considered controversial for reasons related to academic autonomy and exercise of political power. Akin to other states in India, Assam has also had the governor of the state as the chancellor of state universities. It is perceivable that this arrangement provides for more distancing of universities from immediate executive and legislative interference as the governor enjoys relative autonomy from both the state and central executives. In the case of state universities founded by state legislatures, the question assumes more importance as the day-to-day running of state universities cannot be interfered with by the state executive directly, especially since the state executive (read the council of ministers) in the Indian system is the strongest repository of coercive state power. If intellectuals in universities are also to hold truth to power, then that role requires some autonomy from the direct exercise of state coercive power over their immediate circumstances, especially their employment. Though this point may not be formally recognized, it is a consequence of the governor, rather than the chief minister, being the chancellor.

Recently, the controversy over appointment of the chief minister as chancellor of state universities assumed importance in West Bengal and Kerala. In West Bengal, the education minister proposed that the chief minister be appointed chancellor of all state universities. The longstanding and severe tussle between the governor of West Bengal and the state executive serves as a background to this proposal. While, on the one hand, the government of West Bengal had already made rules in 2019 to whittle down the powers of the chancellor of universities,[18] on the other, the governor had complained of 'unionism' on the part of vice-chancellors who had not attended a meeting with the governor as chancellor.[19] In contrast, in Kerala, the governor had urged the chief minister to take over the chancellorship of state universities and pass an ordinance to that effect. The backdrop to this remark was differences over the appointment of a vice-chancellor, and a minister's remark that the governor was sitting on files and delaying the government's work.[20] The chief minister remarked that his government had no intention of taking over the chancellorship of universities.

The fault lines exposed by these controversies bring to light the danger to university autonomy posed by executive control over universities. University autonomy may clearly be impaired by both the chief minister and the governor by exercise of executive powers that are detrimental to academic freedom.

18. The West Bengal Universities and Colleges (Administration and Regulation) Act, 2017, s. 17.
19. Shubhankar Chowdhury, "Chief minister as chancellor? Bengal govt mulls option", *The Telegraph,* Dec. 25, 2021, *available at*: https://www.telegraphindia.com/my-kolkata/news/chief-minister-as-chancellor-bengal-govt-mulls-option/cid/1844727 (last visited on Nov. 21, 2021).
20. Ramesh Babu, "Don't intend to take over guv's post as chancellor of universities: Kerala CM", *The Hindustan Times*, Dec. 30, 2021, *available at*: https://www.hindustantimes.com/india-news/dont-intend-to-take-over-governor-s-post-as-chancellor-of-universities-kerala-cm-101639334643637.html (last visited on Nov. 21, 2021).

However, the largely titular nature of the governor's office, and its relative detachment from the exercise of executive power by the state government, makes it a better fit for a predominantly ceremonial role such as the chancellor's. That will be more so if the ruling parties at the state and the center are different. Having the chief minister as the chancellor of a university is a clear signal of direct executive control over the university. Perhaps the intention of the Assembly in the case of the Assam Skill University is to precisely make this distinction, as the state executive desires more control over the direction that a skill university seeks to take. This might arguably be more efficient in meeting skill related objectives of the state. Simultaneously, it might be argued that decisions related to skills education would be influenced by political interests rather than knowledge-based reasons. However, the overall trend of setting a precedent of direct executive control over universities is an aberration in thinking about university administration. Other skill-oriented universities, such as the Delhi Skill and Entrepreneurship University or Shri Vishwakarma Skill University are state universities with the lieutenant governor and governor respectively as chancellors. Assam, therefore, stands out in choosing the chief minister as the chancellor, betraying the Assembly's desire to exercise executive control over academic institutions at the cost of intellectual autonomy.

Compared to The Skill University Act, 2020, the Birangana Sati Sadhani Rajyik Vishwavidyalaya Act, 2020 is a conventional law setting up a state university in Golaghat district. In deciding to set up the university, the chief minister stated that it was motivated by a desire to 'keep the memory of the brave Chutia queen alive and bring (it) forth to the new generation.'[21] Several remarks were made in the House on how this bill along with another is aimed at preserving the rich cultural heritage of the Assamese community. The chief minister also tweeted that the university would offer multidisciplinary courses in accordance with the NEP.[22] Though education is a concurrent legislative power under List III, the easy acceptance of the NEP and the express commitment to it during the passage of this Act show that the government intends to implement the central policy unquestioningly and also seeks to portray the establishment of universities to win the confidence of specific communities. The Chutia community is electorally relevant in Golaghat and has been demanding ST status even though a large section of Chutias are Hindus. It is currently categorized under other backward classes (OBC).

Apart from establishing universities, the Assembly also passed the Assamese Language Learning Act, 2020 that makes it compulsory for all schools to have Assamese language in their curriculum from standard I to X. Schools not teaching Assamese as a modern Indian language (MIL) or first language would have to introduce the language as the second or third language. The Act does not apply to the sixth schedule areas, Bodo medium schools of Bodo-inhabited areas, and Barak Valley areas (where Bengali is predominant).[23] Students transferred to schools of Assam and admitted to class VI or above are also exempted from the Act.[24] Failure to comply with the Act would invite an inquiry by a competent authority set up for ensuring compliance and lapses could attract penalties including cancelation of trade license or discontinuation of electricity.[25] The Act was welcomed by several civil society organisations and regional organisations such as the *Assam Sahitya Sabha* and All

21. Bitopan Deka, "Assam govt to set up Birangana Sati Sadhani State University in Golaghat", *Eastmojo*, Sep. 02, 2020, *available at*: https://www.eastmojo.com/news/2020/09/02/assam-govt-to-set-up-birangana-sati-sadhani-state-university-in-golaghat/ (last visited on Nov. 24, 2021).
22. *Ibid.*
23. The Assamese Language Learning Act, 2020, s. 2(1).
24. The Assamese Language Learning Act, 2020, s. 5.
25. The Assamese Language Learning Act, 2020, s. 8.

Assam Student Union. These organisations have been persistently demanding the compulsory teaching of Assamese language in schools. The exclusion of the sixth schedule areas and Bodo-inhabited areas, however, does not easily map onto the long-standing demand of such organisations as Assamese regionalist forces argue that the Assamese language is the single most unifying marker of the state.[26] The territorial exemptions in the Act belie this sentiment as it expressly recognizes that Assamese is not to be accorded priority in areas inhabited by communities under the sixth schedule.

The Assam Non-Government Educational Institutions (Regulation of Fees) (Amendment) Act, 2020 was passed to include all private schools and colleges imparting education in two or more classes from pre-primary to class XII, excluding those established and maintained under Article 30 (1) of the Constitution of India. The parent Act of 2018 provided for the regulation of fee structure of private educational institutes of the state through a fee regulatory committee. It would have the power to determine the maximum fee of private schools, considering location, investment incurred, infrastructure, expenditure on administration and maintenance, number of students, qualifications of teaching staff and expenditure incurred on students. The committee has the power to impose penalties and to recommend the cancellation of registration of an institution. The Act was amended to respond to economic hardships brought by the pandemic resulting in several families failing regularly to pay the fees of private schools.

The Assam Elementary and Secondary School Teachers' (Regulation of Posting and Transfer), Act, 2020 and Assam Education (Provincialisation of Services of Non-Teaching Staff of Venture Educational Institutions) (Amendment) Act, 2020 dealt with transfer regulation and salary matters of educational institutes.

Acts Related to State Finance: Finances in the Shadow of Elections?

The Assembly passed nine Acts that were related to matters of state finance. Four Acts titled Assam Appropriation Act 2020 (No. I, II, III and IV) were passed in 2020. Appropriation Acts are usually passed after budget sessions to cover revised budget expenditure in the subsequent sessions. The Acts authorise the government to withdraw certain sums from and out of the consolidated fund of the state. These Acts I, II, III and IV in 2020 saw the state withdrawing approximately Rs 1180 crore,[27] Rs 103762 crore,[28] Rs 8142 crore[29] and Rs 10437 crore[30] respectively. While Appropriation Act (No. I) was to cover revised state expenditure of session 2019-20, the later Appropriation Acts were passed for covering the budget expenditure of 2020-2021 session. Commentators have termed the 2020-2021 budget populist and election-oriented. Increase in state expenditure for providing free rice to 57 lakh households, free distribution of electricity till 30 units of consumption per month, one-time financial benefit of Rs. 10,000 to students from the tea-tribe community, allocation of Rs. 10 crore to retired tea-garden labourers, one-time cash incentive of Rs. 50000 each to several sports personnel and artists,

26. For a discussion of Assamese nationalism *see* Monirul Hussain, "Tribal Question in Assam" 27(20/21) *Economic and Political Weekly* 1047-1050 (1992); K M Sharma, "The Assam Question: A Historical Perspective" 15(31) *Economic and Political Weekly* 1321-1324 (1980).
27. Appropriation Act (No. I) 2020, s. 3.
28. Appropriation Act (No.II) 2020, s. 3.
29. Appropriation Act (No. III) 2020, s. 3.
30. Appropriation Act (No. IV) 2020, s. 3.

Rs 50 crore for celebrating festivals of tribal communities and other expenditure of similar nature were reflective of an election-oriented budget.[31]

Expenditure for enacting many populist Acts capable of promoting social welfare, such as the three Acts establishing autonomous councils were earmarked by the passing of Appropriation Acts. A 500-crore special package was also provided to four tribal communities including the *Moran* and *Mattak* communities. The Appropriation Acts authorised the government to spend a revised expenditure of Rs. 5948 crore on social welfare measures.[32] This was a substantial increase of Rs. 1,580 crore from the revised expenditure of 2019-2020 on social welfare, which stood at Rs. 4368 crore.[33]

With the state struggling with economic challenges posed by COVID-19 and the resultant lockdown, the government was compelled to increase its borrowing capacity. The Assam Fiscal Responsibility and Budget Management (Amendment) Act, 2020 made the government eligible for an additional borrowing of Rs. 2000 crore and up to 2.5 percent of GSDP for the year 2020-21.

Conclusion: Executive Domination of Legislature

The year 2020 saw the legislative assembly of Assam function with quantitatively high efficiency: low working hours as input and high legislative output. Efficiency perhaps came at the cost of hours spent on meeting and deliberating legislation. If deliberations were one of the metrics for qualitative assessment of the Assembly, then there was a significant shortfall. Coupled with the fact that several of the legislations were aimed at electoral advantage through balkanisation of pan-state interests and polarisation of electorally significant communities, it is perhaps not a far throw to characterize this year as an executive domination of the legislature in a Westminster system. In real terms this would translate as party-dominance of the executive, since electoral interests are those of the victorious political party, which in turn forms both the executive as well as the legislative majority. The rest of the legislature is irrelevant unless there are institutional mechanisms making them stronger determinants of legislation. This trend of 'executivisation', so to say, then transcends federal boundaries as the politics of the executive in Assam and the union executive (read political party with parliamentary majority) have been aligned. The Repealing Acts and Acts creating autonomous councils stand testimony to that. Assam 2020, therefore, adds to the evidence that the emphasis on electoral democracy in India as an index of political legitimacy marginalizes both deliberative democracy and non-ethnonationalist identity formation across the state.

31. Budget Speech 2020-21, *available at:* https://finassam.in/budget_documents/ (last visited on Jan. 30, 2022).
32. Manish Kanadje, "Assam Budget Analysis 2021-22", *PRS Legislative Rsearch,* July 18, 2021, *available at*: https://prsindia.org/budgets/states/assam-budget-analysis-2021-2022 (last visited on Jan. 30, 2022).
33. Anurag Vaishnav, "Assam Budget Analysis 2020-21", *PRS Legislative Research,* March 6, 2020, *available at*: https://prsindia.org/budgets/states/assam-budget-analysis-2020-2021 (last visited on Jan. 31, 2022).

BIHAR

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Introduction

Owing to its history of promulgating and re-promulgating ordinances and violating the federal structure and the principle of separation of power, Bihar is often referred to as the place of origin of ordinance raj in India.[3] The ailment runs so deep in the state that Dr. D.C. Wadhwa in an academic study on the issue of re-promulgation of ordinances in the state found that a total of 256 ordinances were promulgated and re-promulgated between 1967 and 1981. Of these, some lasted for as long as fourteen years. Further, he wrote a book based on this research, which was used in instituting a writ under article 32 of the Constitution. In *Dr. DC Wadhwa and Ors* v *State of Bihar and Ors*[4] he sought to quash ordinances re-promulgated by the governor of Bihar without placing it before the state legislative assembly. Dr. Wadhwa succeeded in his petition and hoped that it would put an end to ordinance raj in India. However, the executive has been found to make use of ordinances to establish itself wherever centralized undemocratic forces are emergent.[5] Bihar succumbed to its old pattern despite the judiciary's warning, as is evident from another litigation in 2017 on a similar issue as *DC Wadhwa*.[6] The number of ordinances passed by the executive in Bihar has only seen a rise over the years, especially in the last decade.[7] The most concerning factor in the incessant use of ordinances in the recent past is that most of the ordinances were not supported by any reasoning as was mandated in *Krishna Kumar Singh*.[8]

Quantitative Overview

In 2020, Bihar passed a total of 18 Acts of which three were Appropriation Acts and one was a municipal Act. Of the remaining 14 Acts, nine may be traced back to previously promulgated ordinances. The five Acts which did not originate from ordinances were: the Bihar State Higher Education Council Act, 2018 (passed in 2020), the Bihar Fiscal Responsibility and Budget Management (Amendment) Act, 2020, the Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) (Amendment)

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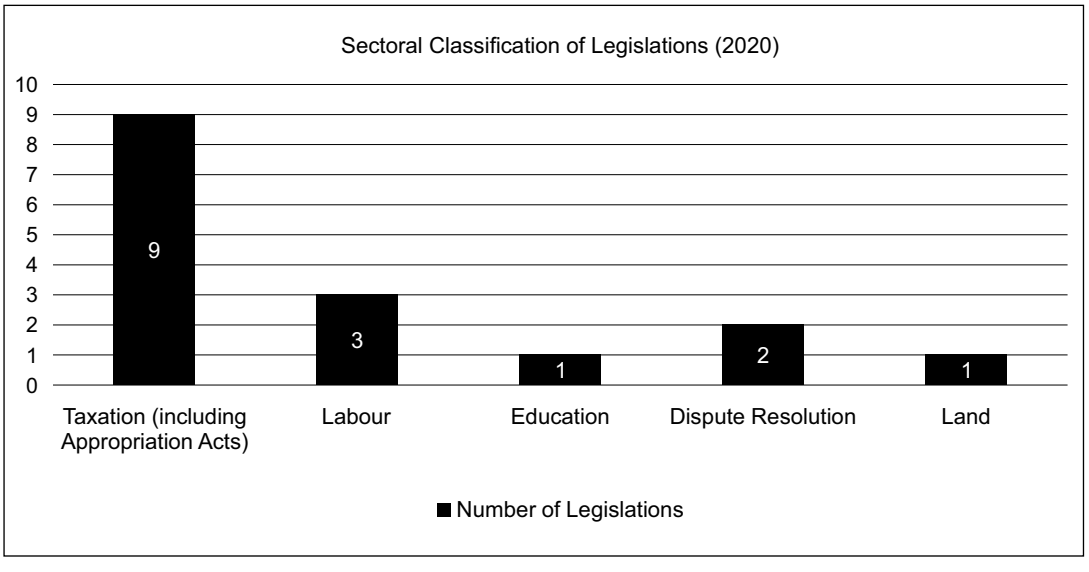
3. The term "ordinance raj" was first used in *Dr. DC Wadhwa and Ors* v. *State of Bihar and Ors,* AIR 1987 SC 579.
4. 1987 S(1) 798.
5. Hermann Pünder, "Democratic Legitimation of Delegated Legislation—A Comparative View on the American, British and German Law" 58(2) *International & Comparative Law Quarterly* 353-378 (2009).
6. *Krishna Kumar Singh and Anr* v. *State of Bihar and Ors,* (2017) 3 SCC 1.
7. Editorial, "The Ordinance Raj" 56 (50) *Economic and Political Weekly* 7-8 (2021).
8. *Supra* note 6.

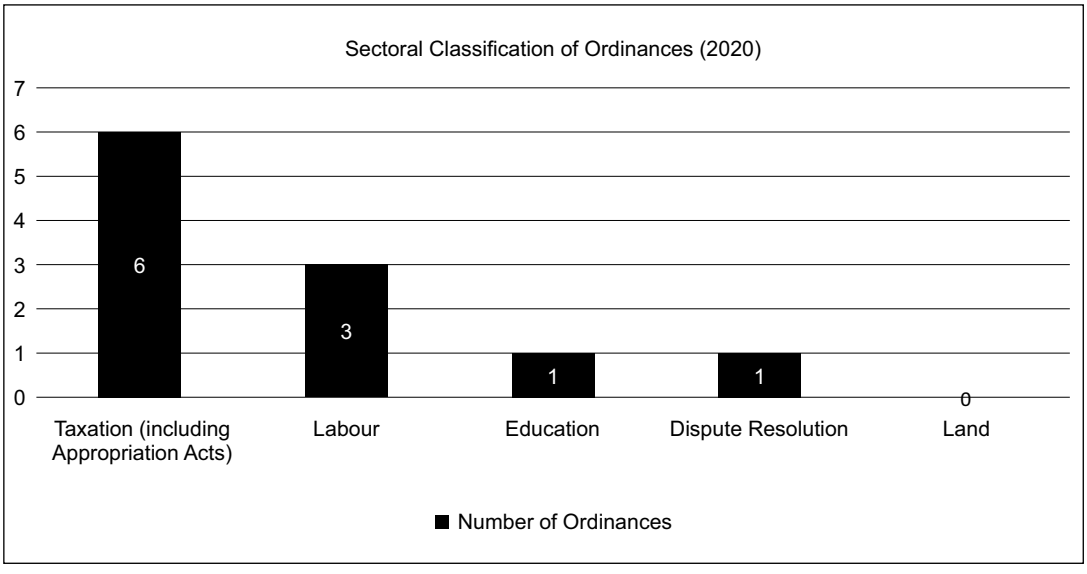
Act, 2020, the Bihar Public Works Contracts Disputes Arbitration (Amendment) Act, 2020, and the Companies (Bihar Amendment) Act, 2020.[9]

The total number of ordinances promulgated during the year was 12, which is a striking contrast to the total four ordinances promulgated between 2016 and 2019. Of these 12 ordinances, the highest attention was paid to the sector of tax where six ordinances were promulgated and nine legislations passed. Thereafter, the sector of labour saw ordinances and legislations, three each. The education sector too witnessed one ordinance and one legislation. In the dispute resolution sector, two ordinances were promulgated and one legislation passed. In the land sector, no ordinances were promulgated but one legislation passed. Apart from these sectors, the Companies (Bihar Amendment) Act, 2020 was also passed. However, the Act is unavailable in the public domain. While Policy Research Studies India (PRS India) recognizes it as being introduced and passed in the same year of 2020, *Manupatra* does not recognize it in the list of legislations passed. Consequently, the report does not analyze the Companies (Bihar Amendment) Act, 2020.

The state assembly sat for a total of 18 days of which 12 sitting days were observed before the lockdown and six after the lockdown. The period of 18 days is equal to the average number of sitting days observed in other states, while it is considerably lower than the average national sitting days which is 30. As compared to the state's average sitting days observed between 2016-2019, the data for the year 2020 mark a steep decline of nearly 47 percent.



9. The Bihar Municipal (Amendment) Act, 2020 originated in the Bihar Municipal (Amendment) Ordinance, 2020 but we have excluded it from the nine Acts passed that originated from an ordinance since municipal Amendment Acts are passed to make miscellaneous amendments that are necessary for smooth governance.



Sectoral Analysis

Education

Bihar passed one legislation and promulgated one ordinance in the area of education in 2020. The Bihar State Higher Education Council Act (BSHEC Act), 2018 passed in 2020 established a state higher education council (SHEC) in the state. The law was enacted in furtherance of the National Education Policy (NEP), 1986 of the government of India which recommends that the state-level planning and co-ordination of higher education be done through the SHEC. Additionally, Rastriya Uchchatar Shiksha Abhiyan (RUSA) of the government of India (ministry of human resource development) also requires states to form an SHEC for increasing the gross enrolment ratio (GER) and improving the quality of education. The establishment of BSHEC is a step in the right direction as earlier there was no body at the state level to co-ordinate the functioning of state universities. In the absence of such a body the state government conducted and controlled the functioning of universities through circulars, meetings and seminars. After this legislation, all the pending draft ordinances and regulations in different universities of Bihar, as well as the draft statutes, will now have to be directly referred to the SHEC for examination. After deliberation, the SHEC would send them to Raj Bhawan for final approval with its comments. After this legislation, Bihar governor's secretariat wrote to all the vice-chancellors, education department officers, and the SHEC for compliance to ensure a smooth and faster workflow. Hitherto, the universities sent their ordinances, statutes, and regulations directly to the chancellor's secretariat for approval, which often consumed a lot of time and led to long pendency. According to a senior official, around 73 ordinances, regulations, and draft statutes, many related to distance education courses being run by different universities, are pending and would be referred to the SHEC for examination.[10]

10. Arun Kumar, "Bihar Raj Bhawan vests SHEC with power to vet varsity statutes, ordinances", *The Hindustan Times*, Feb. 05, 2021, *available at*: https://www.hindustantimes.com/cities/patna-news/bihar-raj-bhawan-vests-shec-with-power-to-vet-varsity-statutes-ordinances-101612518818794.html (last visited on Jan. 28, 2022).

BSHEC would also act as the body through which state universities receive funding. For instance, all the funds under RUSA, with centre-state sharing of 60:40, are routed to the state institutions through the BSHEC.[11] This gives the central government an overriding position to control the funding of state institutions. Moreover, RUSA funding has declined drastically in the recent past. RUSA was allotted only 300 crores in the budget allocation of 2020-2021, a 78 percent decrease from the previous year. Further, the linking of RUSA funds to NAAC score has led to an increase in the financial control exercised by the centre over the state.[12] The Bihar State Higher Education Council (Amendment) Ordinance, 2020 was promulgated to introduce a change in section 6 (2) of the BSHEC Act, 2020. The ordinance allows the reappointment of vice-chairman by the state government up to a maximum period of two terms (up to a maximum of 15 years). The state government has the power to appoint and reappoint.

The provision may have strengthened the power of the state government but it most certainly increases possibility of corruption as an incompetent person may hold on to the position for too long. The Bihar government notified the appointment of Prof. Kameshwar Jha for the second term at BSHEC. The position of SHEC vice-chairman (VC) had remained vacant for over one and a half years since the term of Jha, the first vice-chairman of the SHEC, which had ended on March 28, 2019. Jha got a second term in view of the new provision in the BSHEC Act, 2018, which was notified by the governor in January, 2020 after a long wait of one and a half years.[13]

The *D.C. Wadhwa case*[14] clearly states that ordinances should be passed in exceptional circumstances. The governor promulgated the ordinance stating in the preamble that the ordinance is being revived by him as the state legislature could not enact the previous ordinance and that the circumstances exist which render it necessary for him to revive the previous ordinance to extend the reappointment of the VC up to two terms. The said 'exceptional' circumstances have not been stated in the preamble to the ordinance. The state government clearly did not intend to legislate on this matter, but the central government influenced the governor to revive the ordinance, in effect, diluting the autonomy of the state when no such exceptional circumstances were present. Such instances where the governor is used as "an agent of the centre" is a recurring issue that has led to the establishment of several committees since independence, most of which have been ineffective in catalyzing reforms to improve the federal structure of the nation.[15]

The BSHEC Act is passed by the state and its purpose is to implement the RUSA scheme. However, since RUSA is a central scheme, it is the centre-level policy which ultimately controls the funding and functioning of state higher educational institutions. Education falls in the concurrent list of the Constitution. However, with the BSHEC and the implementation of the NEP 2020, and RUSA, the final decision on funds and powers lies with the centre with restricted freedom to the state. It may also be noted that the university grants commission (UGC), the central regulator of higher education in India,

11. Arun Kumar, "Bihar govt notifies appointment of BSHEC vice chairman and three VCs as members", *The Hindustan Times*, Sep. 25, 2020, *available at*: https://www.hindustantimes.com/education/bihar-govt-notifies-appointment-of-bshec-vice-chairman-and-three-vcs-as-members/story-88whXq2L3uQuac3PGMYsMO.html (last visited on Jan. 28, 2022).
12. Shreya Roy Chowdhury, "Reality of Reforms: Education Policy and a Bihar College", *CAREERS 360*, Feb. 07, 2020, *available at*: https://news.careers360.com/reality-of-reforms-education-policy-and-bihar-college (last visited on Jan. 28, 2022).
13. *Supra* note 11.
14. *Supra* note 4.
15. Rakhahari Chatterji, "Recurring controversy about Governor's role in state politics", *Observer Research Foundation,* June 6, 2020, *available at:* https://www.orfonline.org/expert-speak/recurring-controversy-governor-role-state-politics-67433/ (last visited on April 18, 2022).

also plays a key role in the functioning of BSHEC. According to section 11, the powers and functions of the BSHEC are to be in accordance with the guidelines of the UGC. According to the new NEP, 2020, the UGC will be replaced by the higher education commission of India (HECI) which is aimed at facilitating the funding and financing of higher education on more transparent criteria.

Land

The Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Amendment Act, 2020 was introduced to make conversion fees (from which industries were previously exempted) applicable to agricultural land being converted to non-agricultural land for industrial use. This innovative step was expected to help keep a check on industries by following procedure for both permission and payment of fees. It was also expected to reduce the number of industries exploiting the exemption and ensure fairness in all sectors as industries would also be required to pay the conversion fee. Thus, the amendment could limit industries from being set up due to the payment of conversion fees and might help in tackling the corruption taking place during land allotment and while providing permissions to private industries. Bihar is among the few states to have such a law as it gives the freedom to make inter-departmental interventions to competent authorities like Bihar state pollution control board, department of urban development, department of industries and department of environment and forest.

In recent times, the state government has been acquiring land for various industrial projects belonging to the state as well as central governments. According to a survey, between 2005 and 2013, the state acquired nearly 27370.2 acres of land. In the last couple of years of this period, the land was mostly acquired for either national highways or thermal power projects. It may be noted that the state land amounts to nearly 2.88 per cent of the total landmass of the state but is responsible for supporting around 8.58 per cent of the total population. This makes the Bihar Agriculture Land (Conversion for Non-Agriculture Purposes) Amendment Act, 2020 timely. Further, it considerably addresses the shortcomings arising from outdated records, untrained workforce, lack of suitable infrastructure, and the absence of efficient land usage policies. The Bandhopadyay commission had already suggested to the state to investigate the problems relating to contract farming, provide the *bataidars* with legal safeguards, and assess the excess land held illegally by the estates and other landed classes.[16] The amendment promises to structurally address these issues and compensate for the missing organizational regulation in a state which was the first to witness the enactment of major legislations relating to land reforms.[17]

Dispute Resolution

The Bihar Right to Public Grievance Redressal (Amendment) Act, 2020 (BRPGRA) amends section 2 (a) of the BRPGRA, 2015 with the effect that matters related to ration cards will also be included in the

16. Few other recommendations made by the commission included an improved safeguarding of the *khasmahal* land, regularly updating the land records, filling up vacancies in the land reform department, and making the mutation process mandatory and more simplified. The report noted that the state lacks *bataidari* rights, has an improper system of land revenue, and the accumulation of land within the possession of few estates which caused its land reform efforts to fail. *See* PTI, "Panel suggests major land reform steps in Bihar", *The Times of India*, April 13, 2008, *available at*: https://economictimes.indiatimes.com/news/economy/policy/panel-suggests-major-land-reform-steps-in-bihar/articleshow/2948750.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited on January 28, 2022).
17. Chandragupt Institute of Management Patna, "Land Governance Assessment Framework for Bihar" (2014), *available at*: https://www.landportal.org/library/resources/land-governance-assessment-framework-bihar-india (last visited on January 28, 2022).

right of public grievance redressal as provided under the BRPGRA, 2015. It is administered by Bihar Prashasnik Sudhar mission (Bihar administrative reforms mission) under the general administration department. The principal Act has often been hailed to be successful in introducing a platform for grievance redressal in Bihar. The government, in a report on the Act notes:

> "The BRPGRA focused clearly on the processes that produced what the citizens (consumers) wanted: redressal, not just disposal of the case. The past systems were not backed by a legal right. It was not unusual for the complainant to file the same grievance again. The focus on processes to produce a result desired by the resident of Bihar is one of the most significant changes that BRPGRA has brought about."[18]

However, the Act required changes on the ground level to achieve its full potential. The amendment has been made in this light to meet the long-standing demand of people to have a speedy resolution of ration-card related matters. This is also relevant due to the state government schemes and policies which are dependent on the issuance and use of ration cards. Other than this, the central government scheme 'One Nation, One Ration Card' also requires a valid ration card for availing food grain under the National Food Security Act. It may be noted that both the state and the central government schemes which require the beneficiary to hold a ration card, also require, by default, that ration card be linked to the beneficiary's *Aadhar* card. Thus, the privacy of an individual is put at risk by the centre though the state.

The second amendment introduced in Bihar in the area dispute resolution is the Bihar Public Works Contracts Disputes Arbitration (Amendment) Act, 2020 to the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. The amendment lays down the maximum term for holding office and gives power to the state government to remove the chairman and other members of the tribunal for certain corrupt and other acts.[19]

Labour

Bihar has introduced many amendments to central labour legislations with the objective of attracting investment in the state to deal with the economy slowing due to the pandemic. Most of the 'reforms' take away rights held by workers. Sundar and Sapkal, in *Labour Laws and Governance Reforms in the Post-reform Period in India: Missing the Middle Ground? Essays in Honour of Prof. KP Chellaswamy (2020),* have analyzed the reforms and encapsulated them within four major reasons cited by state governments that introduced labour law reforms during the pandemic: (a) Labour shortage due to migration during the pandemic (b) Labour flexibility to attract companies quitting China (c) Overcome economic crisis due to pandemic (d) Allow employers to protect existing jobs and create new jobs. They also highlight the real reason behind the timing of introducing the reforms, which is either the impossibility of or difficulty in organising protests against the reforms during a pandemic. Their study also challenges the use of the term "reform" for anti-labour, regressive amendments. India ranks so low in ITUC Global Rights Index that workers in India have been categorised as experiencing "no guarantee of rights".

18. Government of Bihar, "Samadhan: Bihar Right to Public Grievance Redressal Act" 7 (2017).
19. A similar ordinance was promulgated by the union government in November 2020 to amend the Arbitration and Conciliation Act, 1996 which has now been passed as the Arbitration and Conciliation (Amendment) Act, 2021.

The Contract Labour (Regulation and Abolition) (Bihar Amendment) Act, 2020 amends sections 1 (4) (a) and 1 (4) (b) of the Contract Labour (Regulation and Abolition) Act, 1970, increasing the minimum number of workmen required for an establishment to fall under the purview of the Contract Labour (Regulation and Abolition) Act, 1970. The amendment gives more freedom to establishments to increase output at the expense of the workers' rights. The central objective of the amendment was to uplift Bihar's economy from the adversities inflicted by COVID-19 by increasing industrial and economic activities. The Amendment Act replaces the Contract Labour (Regulation and Abolition) (Bihar Amendment) Ordinance, 2020 (Bihar Ordinance No-06- 2020). The states of Madhya Pradesh, Uttar Pradesh, Kerala, Punjab, Himachal Pradesh, Uttarakhand, Haryana and Gujarat also passed similar amendment laws to provide relief to industries during the lockdowns imposed due to the COVID-19 pandemic.[20] Raising the ceiling of minimum number of workers required in an establishment before the regulatory law applies will remove workers in many industrial establishments from the protective purview of labour law. Establishments with lower number of employees will thus not be liable to their employees under labour law. The requirements of registration, and licensing would no longer apply to them. And they would have no obligations of providing minimum wages and other facilities for employees' welfare. Such amendments are beneficial for employers as they can get more output without concomitant legal duties and liabilities. It will also result in the informalisation of the Indian workforce preventing them from accessing benefits relating to employment, health and safety, skills, and income.[21] Employees in other states where similar amendments were passed have protested against the amendments as they violate multiple rights of workers. Such laws may affect centre-state coordination as these amendments to central labour laws are passed by states on the insistence of the centre.[22]

The Industrial Disputes (Bihar Amendment) Act, 2020 amends section 25K of the Industrial Disputes Act, 1947. Section 25K of the Industrial Disputes Act, 1947 lays down the criteria for special provisions relating to lay-off, retrenchment and closure to be applicable to industrial establishments. In Section 25K, the words "one hundred", was substituted by the words "three hundred". The amendment also laid down that the provisions relating to closure of establishments would not be applicable to industrial establishments with less than three hundred workers. Additionally, it gave power to the state to exempt new industries from all the provisions of the act for a period of thousand days.[23] Similar to the previous amendment, this amendment also increased the minimum number of workers required in an establishment for the special provisions to be applicable. It allowed industrial establishments to be exempt from any liability if their workers were laid off or retrenched without prior notice. By this amendment workers were also deprived of the right to form unions, The amendment only benefitted the employers by reducing their legal liabilities and by bringing the employees under their closer regulation.

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20. Raj Dev Singh, *et al*, "State-wise Relaxation Of Labour Legislations Amidst COVID-19", *Mondaq*, June 4, 2020, *available at*: https://www.mondaq.com/india/employment-and-workforce-wellbeing/946064/state-wise-relaxation-of-labour-legislations-amidst-covid-19- (last visited on Jan. 28, 2022).
21. KR Shyam Sundar and R S Sapkal, "Changes to labour laws by state governments will lead to anarchy in the labour market" 55(23) *EPW Engage*, June 06, 2020, *available at*: https://www.epw.in/engage/article/changes-labour-laws-state-market-anarchy-labour-market (last visited on April 18, 2022).
22. Somesh Jha, "Centre passes the baton on to States for initiating labour law reforms", *The Business Standard,* May 20, 2020, *available at*: https://www.business-standard.com/article/economy-policy/centre-passes-the-baton-on-to-states-for-initiating-labour-law-reforms-120052001439_1.html (last visited on April 18, 2022).
23. Similar ordinances were passed in Himachal Pradesh which increased this threshold limit to 200 workers and Karnataka, Gujarat, Goa, Odisha, and Punjab which increased it to 300 workers. Laws passed by Assam (excluding tea industries) and Goa allow the state government to exempt any new industrial establishment or undertakings from all or any provisions of the act for the first 1,000 days from the date of establishment of such new industries.

The Factories (Bihar Amendment) Act, 2020 amends section 2(m) of the Factories Act, 1948 to increase the threshold of minimum workers required. It also gives power to the state to exempt new factories from all the provisions of the act for a period of 1000 days. The amendment is similar to the other two labour amendments, and aims to increase the industrial and economic activities by providing new opportunities for industrial investment to aid speedy recovery from the ill-effects of the pandemic, even if at the cost of the rights of the workers.[24]

Financial/Fiscal/Taxation

In 2020, Bihar passed a total of nine Acts and ordinances under the financial/fiscal/taxation category. Both the state and the centre have the power to make laws under the financial aspects in the concurrent list. Acts such as the Bihar Fiscal Responsibility and Budget Management (Amendment) Act, 2020 was passed after receiving consent from the centre on the same. The Bihar Taxation Laws (Relaxation of period of limitations Provisions) Act, 2020 was passed in line with the Taxation Laws (Relaxation of period of limitations Provisions) Ordinance, 2020 passed by the central government. Similarly, the Bihar Goods and Service Tax (Amendment) Act, 2020 also followed the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020. The government also passed three Appropriation Acts for 2020 (not analysed in this survey as Appropriation Acts are passed by states on a regular basis for smooth governance).

The Bihar Fiscal Responsibility and Budget Management (Amendment) Act, 2020 amends Section 9 (2) (b) (3) of the Bihar Fiscal Responsibility and Budget Management Act, 2006. This would enable the state to borrow an additional Rs 4.28 lakh crore from the centre. The earlier limit for state borrowings was set at Rs 6.4 lakh crore. Putting together the extra allowed borrowing, the total limit reaches to Rs 10.68 lakh crore. However, any request for loan from the state may only be passed if the finance commission deems it fit.[25] The increased borrowing limits have come with the attendant condition[26] that the state implement reform priorities laid down by the central government.[27] The Constitution of India allows the union government to place barriers on state borrowing as long as the state owes it money. However, by placing conditional borrowing limits, the union government is using the vast financial powers awarded to it under the Constitution to intrude into policy areas that are firmly with the states.

An increase in the state government's borrowing limit to five percent of Gross State Domestic Product (GSDP) will help absorb the expected plunge in their revenue receipts, and avoid a severe cutback in capital expenditure. Four percent of the loan availed by the state was to be spent on development work

24. The amendments are similar to other labour law amendments in Himachal Pradesh, Goa, Punjab, Gujarat, Assam and Odisha, and have also increased the threshold for any premises to be considered as a factory.
25. PTI, "Houses pass Bill to help Bihar govt borrow Rs 5,688 cr from the market", *The Business Standard,* March 5, 2020, *available at*: https://www.business-standard.com/article/pti-stories/houses-pass-bill-to-help-bihar-govt-borrow-rs-5-688-cr-from-120030501688_1.html (last visited on April 18, 2022).
26. These reforms include recommendations by the 15th Finance Commission such as ensuring sustainability of additional debt through higher future GSDP growth and lower deficits, promoting welfare of migrants and reducing leakage in food distribution, increasing job creation through investment, safeguarding interests of farmers while making the power sector sustainable and promoting urban development, health and sanitation.
27. BQ Desk, "Covid-19 Economic Package: Government Allows Increased State Borrowings With Conditions Attached", *The Bloomberg Quint,* May 17, 2020, *available at*: https://www.bloombergquint.com/economy-finance/covid-19-economic-package-government-allows-increased-state-borrowings-with-conditions-attached (last visited on April 18, 2022).

only and not for paying salaries and pensions. The approval for the remaining one percentage point depended upon the states' carrying out reforms in four areas — one nation one ration card; ease of doing business; urban local body/ utility, and power distribution.[28] This amendment was carried out on the demand of Bihar to uplift the economy from the impact of COVID-19.

The Bihar Taxation Laws (Relaxation of period of limitations Provisions) Act, 2020 was enacted to extend the limitation period under the specified acts from March 20 to June 29. The limitation period was then extended to December 31, 2020 or a chosen date after December 31, 2020, not later than December 31, 2021. This Act was passed in view of the challenges faced by taxpayers in meeting the statutory and regulatory compliances due to the outbreak of COVID-19.[29] The Act provides more time to taxpayers for furnishing of income tax returns and other tax related procedures such as registration and payment of penalties. The central government has emphasised online filing of taxes through the newly launched tax filing portal.[30] This was also in line with the supreme court's direction to extend the period of limitation in all proceedings before the courts and tribunals with effect from March 15, 2020 until further orders.

The Bihar Goods and Service Tax (Amendment) Act, 2020 adds section 168 A to the Bihar Goods and Services Tax Act, 2017. The provision provides that time limit can be extended for certain actions under the Act in special circumstances arising due to *force majeure*. The government has simultaneously issued the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on March 31, 2020, to give itself power to extend timelines for undertaking any actions required under the GST legislations on account of force majeure situations, including epidemics. However, declaration of COVID-19 as *force majeure* or act of god has led to a tussle between the states and the centre, with the centre refusing to make good the shortfall in compensation cess for the year which resulted in a huge reduction in revenues for the states. As a way out, the centre offered two options to the states but both options involved borrowing from the reserve bank of India (RBI).[31] The amendment will also have an impact on daily lives of people who will have to bear the cost of reduced developmental funding. State revenue is bound to take a hit during a time when it urgently needs more funds. In order to address the paucity of resources the centre made some fund-raising proposals to the states. However, all the proposals required states to borrow in order to raise resources.[32]

The Bihar Taxation Law (Amendment) Act, 2020, amends section 14 of the Bihar Value Added Tax Act, 2005. Under the amendment, the tax shall be calculated on the sale price of the goods at such rate

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28. Special Correspondent, "States' borrowings shot up by over 80% due to pandemic", *The Hindu*, Jan. 22, 2021, *available at*: https://www.thehindu.com/news/national/states-borrowings-shot-up-by-over-80-due-to-pandemic/article33630633.ece (last visited on Jan. 28, 2022).
29. Vikas Vasal, "Relaxation in Income Tax Compliances Amid COVID-19 Outbreak", *The Mint,* April 9, 2020, *available at:* https://www.livemint.com/money/personal-finance/relaxation-in-income-tax-compliances-amid-covid-19-outbreak-11586433656568.html (last visited on April 18, 2022).
30. Preeti Motiani, "Income tax return filing deadline for FY 2020-21 extended to December 31, 2021", *The Economic Times,* Dec. 27, 2021, *available at*: https://economictimes.indiatimes.com/wealth/tax/income-tax-return-filing-deadline-for-fy-2020-21-extended -to-december -31-2021/articleshow/85616228.cms (last visited on Jan. 28, 2022).
31. Prabhash K Dutta, "GST compensation row: How Act of God may help Centre", *India Today*, Aug. 28, 2020, *available at*: https://www.indiatoday.in/news-analysis/story/gst-compensation-row-act-of-god-nirmala-sitharaman-1716047-2020-08-28 (last visited on Jan. 28, 2022).
32. Rahul Menon, "Acts of God and the All-Important GST Pact Between the State and Centre", *The Wire*, Aug. 30, 2020, *available at*: https://thewire.in/economy/acts-of-god-and-the-all-important-gst-pact-between-the-state-and-centre (last visited on Jan. 28, 2022).

as not exceeding 50% or the weight or volume of the goods at such rate as not exceeding 50 rupees per litre or any combination of both. The amendment was made in view of the rapidly fluctuating prices of petroleum crude oil in the international market in view of the spread of the pandemic COVID-19 across many countries in the world including India incurring loss of value added tax revenue from petrol and diesel. The amendment does away with the classifications in terms of the schedule.

The Bihar Goods and Services Tax (Second Amendment) Act, 2020, amends several provisions of the Bihar Goods and Services Tax Act, 2017. Firstly, under section 29(1)(c), for cancellation of registration, the taxable person can intend to opt out of the registration voluntarily made under sub-section (3) of section 25 (procedure for registration) which was previously excluded and included no liability for taxable persons to be registered under section 22 or section 24. Secondly, under section 30(1), the revocation of cancellation of registration can be extended if sufficient cause can be shown and for reasons to be recorded in writing by the additional commissioner or the joint-commissioner, as the case may be, for a period not exceeding thirty days or by the commissioner for a further period not exceeding thirty days, beyond the period specified in clause (a). Before the amendment, any registered person, whose registration is cancelled by the proper officer on his own motion, could apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order. Thirdly, under section 31(2), the state government may notify on the recommendations of the council the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed subject to the condition mentioned therein, specify the categories of services in respect of which any other document issued in relation to the supply shall be deemed to be a tax invoice or tax invoice may not be issued. Lastly, it inserts Sec. 122(1) and imposes penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on for any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1). It also adds retrospective exemption from, or levy or collection of, state tax in certain cases excluding anything contained in the notification of the commercial taxes department notification number S.O. 65, dated June 29, 2017, issued by the state government under section 9(1) of the Bihar Goods and Services Tax Act, 2017 wherein no state tax shall be levied or collected in respect of supply of fishmeal (falling under heading 2301), during the period commencing from the July 1, 2017 and ending with the September 30, 2019 (both days inclusive) and, state tax at the rate of six percent shall be levied or collected in respect of supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery (falling under headings 8432, 8433 and 8436), during the period commencing from the July 01, 2017 and ending with the December 31, 2018 (both days inclusive). Also, the amendment removes refund for all tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.

The Bihar Prohibition and Excise (Amendment and Validation) Act, 2020 amends section four of the Bihar Prohibition and Excise Act, 2016. Firstly, the amendment declares the overriding effects of the Bihar Prohibition and Excise Act, 2016 on all Acts, ordinances, rules or decision or judgment, decree or order of any court of law which previously excluded (a) the Customs Act, 1962 (Act 52 of 1962) or (b) the Cantonments Act, 2006, (41 of 2006). Secondly, all acts done in accordance with the provisions of Bihar Prohibition and Excise Act, 2016 by assistant sub- inspectors of police shall be deemed to be valid.

The Bihar Settlement of Taxation Disputes Ordinance, 2020 lays down the manner for settlement of disputes and settlement amounts. The law is similar to a central government scheme 'Vivad se Vishwas' (now a legislation) which was launched to bring down pending IT litigation, generate timely revenue for the government, and benefit the taxpayers. The law provides relief to taxpayers to settle pending

tax disputes easily and conveniently by paying a certain settlement amount. This scheme aims to end all direct tax disputes.[33]

Conclusion

It may be observed that the pandemic contributed to considerable changes in the functioning of the state legislature of Bihar. This is not merely evident from the low number of sitting days held but also from the sheer number of ordinances promulgated as compared to the previous years. Most of these ordinances pertained to the tax sector, followed by labour and then dispute resolution. The least number of the ordinances were in the sectors of land and education. The most important reason behind this selective approach towards sectors was the urgency to shake off the adverse effects of the pandemic and the lockdown from the economy.

If the ordinances promulgated in various sectors are carefully analysed, a common observation is gathered. Most of these ordinances show an overt structural interference of the central government in the matters of the Bihar government. For instance, in the education sector, the BSHEC was set up in such a manner that it could not function independently of the central government. The NEP 2020 and the RUSA scheme allow the centre to indirectly control the functioning, decision making, and funding of state higher education institutions. In the dispute resolution sector, the inclusion of ration card related disputes under the BRPGRA is a step in the right direction to solve issues at the ground level. However, the insistence of the centre on the mandatory linking of the ration cards with the *Aadhar* card leaves less room for state government's autonomy. Whether the scheme has been offered by the state government or the central government, if it requires the beneficiary to possess a ration card, it will also inevitably and automatically requires the ration card to be linked to the *Aadhar* card. The indirect collection of information through schemes and redressal forums was not the ostensible objective of the legislators when they enacted the BRPGRA; but the legislation becomes colourable as it allows for the state to breach the privacy of an individual at the behest of the centre.

The slew of ordinances passed in the field of labour are indicative of the continuance of ordinance raj in Bihar and a violation of *DC Wadhwa* judgment.[34] These ordinances have led to the dilution of labour regulations and the rights of workers. The judgment states that the shift of the law-making power to the executive in emergency situations is contrary to the norms of a democratic nation holding that "*the power to promulgate an Ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be perverted to serve political ends*". Similarly, the supreme court in *Krishna Kumar Singh* v. *the State of Bihar* held that the authority to issue ordinances is not an absolute entrustment, but is "*conditional upon satisfaction that circumstances exist rendering it necessary to take immediate action*".[35] The centre has facilitated the carrying out of similar ordinances in various states around the same period of time to boost the economy affected by the lockdown imposed due to COVID-19 which was protested by a number of state governments, thereby questioning its necessity and the need for the centre to take such measures without consulting the state governments. Labour laws fall in the concurrent list of the

33. India Today Web Desk, "Vivad se Vishwas: CBDT extends payment deadline under tax dispute scheme till September 30", *India Today*, Aug. 31, 2021, *available at*: https://www.indiatoday.in/information/story/vivad-se-vishwas-scheme-cbdt-extends-payment-deadline-under-tax-dispute-scheme-till-september-30-1847558-2021-08-31 (last visited on Jan. 28, 2022).
34. *Supra* note 4.
35. *Supra* note 6.

Constitution of India. However, these labour ordinances indicate the indirect influence of the centre in imposing complete control to dilute labour laws through regional reforms.

In the tax sector, the use of the force majeure or act of god has led to a tussle between the states and the centre, where centre has refused to make good the shortfall in compensation cess for this year which in turn results in a huge reduction in revenues for the states. The centre, on advice of the attorney general claimed that it is not responsible to pay GST compensation due to extenuating circumstances. This was made possible by the presumption that the state is a private player in a contractual relationship whose responsibilities are waived due to act of god, when clearly the nature of relationship between the centre and states is much more than what exists between parties in a private contract.

CHHATTISGARH

Nikita Agarwal[1]

Introduction

Chhattisgarh was carved out of the state of Madhya Pradesh on November 1, 2000, vide the Madhya Pradesh Reorganisation Act, 2000. The state has 27 districts and is split into five divisions: the Surguja division, the Bilaspur division, the Raipur division, the Durg divison and the Bastar division. It is largely rural; only 23.24 percent of the population is urban.[2] As per the 2011 census, the population of scheduled tribes is 7,822,902—about 27 percent of the state's entire population. Most of the tribal population is found in Surguja and South Chhattisgarh. Rich in mineral resources, these areas are predominantly covered by forest land. In terms of human development indexes, the areas are very poor. Owing to their socio-economic and political position, and what they perceive as corporate-friendly policies of the state and its instrumentalities, the *adivasis* have for years been at odds with the state government. Consequently, large parts of the Bastar division and some parts of the Surguja and Durg divisions have become grounds of battle between the government and the left-wing insurgents subscribing to Maoist politics.

In the background of the COVID-19 crisis the Chhattisgarh legislative assembly led by the Indian National Congress met for a total of 23 days in 2020 and passed several laws around higher education, local government, budgetary allocation and taxation, etc. Two fresh laws including the Chhattisgarh Private School Fee Regulation Act, 2020 and the Chhattisgarh Plastic and Other Non-Biodegradable Material (Regulation of Use and Disposal) Bill, 2020 were passed by Chhattisgarh.

The Pandora's Box of Unkept Promises

The new government promised several new bills and laws, the most prominent being a law for the protection of journalists and stringers in the state. This law was one the of primary election promises in the campaign of Chief Minister Bhupesh Baghel, owing to the large-scale persecution of journalists in Chhattisgarh, particularly in south Chhattisgarh.[3] After the Congress came into power in the state, the chief minister set up a committee led by retired Justice Aftab Alam of the supreme court of India to draft the bill. Pertinently, this law was initially drafted as the Chhattisgarh Special Act for Protection of Journalists and Human Rights Defenders by the Peoples Union of Civil Liberties, but was tweaked by the committee to narrow the ambit of the law to protecting journalists and media persons and to

1. Advocate, High Court of Delhi.
2. Government of India, "Provisional Population Totals: Chhattisgarh" (2011) *available at*: https://censusindia.gov.in/2011-prov-results/prov_data_products__chhattisgarh.html (last visited on Jan. 26, 2022).
3. Amnesty International, "Report on 'Blackout in Bastar'" (2016).

widen the definition of 'media persons' to any "*persons who have published six articles in mass media in the preceding three months*".[4] However, there has been no follow-up on the drafted law despite it being presented by the committee after a year of deliberations and consultations, and with the promise that within thirty days of the passage of the Act, "*the government shall constitute a Committee for the Protection of Media persons to deal with complaints of harassment, intimidation or violence, or unfair prosecution and arrests of media persons*".[5] It must be noted that the condition of the journalists and media persons in the state remains as precarious as ever.

The Political Process of Centralisation by the Union Government

With the governments at the centre and the state belonging to different political parties, and the centre engaging in extensive law making to centralise the power of policy decisions and administration, the most significant processes that come through in the law-making in Chhattisgarh are the policy processes of decentralising power. A highlight of the central government's engagement with the state of Chhattisgarh was in the back-and-forth around the auctioning of coal blocks for commercial use in the state.

For the first time ever in the history of India, 41 coal blocks across the country were auctioned by the central government for commercial mining on June 18, 2020.[6] The power to auction such coal mines came from the recently promulgated Mines and Minerals (Development and Regulation) Amendment Ordinance, 2020, which was eventually enacted by parliament.[7] It effectively removed restrictions on the end-use of coal and allowed all companies irrespective of whether they have any experience in mining to acquire coal mines, and carry on coal mining for their own consumption and sale. Most importantly, the ordinance enabled the auction of unexplored and partially explored coal blocks for mining through prospecting license-cum-mining leases. Nine of these coal blocks were in Chhattisgarh,[8] five of them falling in the Lemru Elephant Reserve of Hasdeo Arand forest.

The entire process of auctioning the coal blocks has since been centralised. The power to auction mines was initially proposed as an option to assist states which were unable to do so. However, subsequent events have revealed that there were other intentions. The centre introduced changes in law and policy to divest states of their ownership rights. With the enactment of the Mineral Laws (Amendment) Act, 2020, the central government acquired the authority to provide permits and auction coal mines in India.[9] Prior to the amendment, it was the states which were completely in control of conducting auctions of mineral concession as the state governments were considered to be the owners of minerals

4. *Draft* Chhattisgarh Protection of Media persons Act, s. 10(a).
5. *Draft* Chhattisgarh Protection of Media persons Act.
6. Press Information Bureau, "Unleashing Coal: New Hopes for Atmanirbhar Bharat: Government of India to launch auction for commercial coal mining on 18th June 2020", Ministry of Coal, June 11, 2020, *available at:* https://pib.gov.in/PressReleasePage.aspx?PRID=1630919 (last visited on Feb.10, 2022).
7. The Mines and Minerals (Development and Regulation) Amendment Act, 2020.
8. The nine mines included three from HasdeoArand that is spread over North Korba, South Sarguja and Surajpur districts (Hasdeo represents one of the largest coal reserves in India), two from Korba district and four from the Mand Raigarh block in Raigarh district. Sarah Khan, "Mine Games", *Gaon Connection*, Sep. 23, 2020, *available at:* https://en.gaonconnection.com/mine-games-five-contentious-coal-blocks-in-chhattisgarh-dropped-from-the-auction-list-but-three-objectionable-mines-added/ (last visited on Feb. 09, 2022).
9. The Mineral Laws (Amendment) Act, 2020, ss. 7, 11.

within their respective territories, while the central government had only the ownership of minerals within the exclusive economic zones of India. This understanding was originally incorporated in the Mines and Minerals (Development and Regulation) Act, 1957 by reading the provisions of entry 23 of list II[10] in conjunction with entry 54 in list I[11] of the Constitution of India. In a complete overhaul, the central government vide its ordinance, which was eventually converted into statute, diluted this distinction and made itself the primary owner of all the mines and minerals throughout the country.

In assertion of the new conversion, nine of the coal blocks auctioned were from Chhattisgarh with no consultation and discussion with the state government or the gram sabhas. The bidding amount from these auctions of mines situated in Schedule V areas was accepted even before attaining any of the required clearances as per the terms of the Environment Protection Act,1986, the Forest Rights Act, 2006, the Panchayati Extension of Scheduled Areas Act, 1996, and the Land Acquisition Act, 2013 among others. The gram sabha processes and the land acquisition approvals generally obtained by the state governments when they undertook auctions were not followed as the auction was mooted and centralised via the channel of the Coal Bearing Areas Act, 1957.

The Chhattisgarh government, including nine sarpanches of the affected villages, wrote to the central government urging that the coal blocks falling in the Hasdeo forests and the nearby catchment areas of River Maand be removed from the auction list as the area had been declared as a 'no-go zone' by the state government to preserve the sensitive wildlife and ecology of the densely forested area[12]. The missive was followed by many protests and resulted in the five coal blocks being excluded from the auction. Instead, three new blocks Dolesara, Jarekela and Jharpalam-Tangarghat in Raigarh district were added to the list. Pertinently, the region was already "reeling from severe impacts of coal mining and thermal power generation"; and the mines had contributed greatly to high levels of pollution and environmental degradation.[13]

The entire saga of coal mining continues to be an issue of fierce contention in Chhattisgarh. The state engaged in an administrative decision of echoing the demands of its citizens, while it continued to bargain with the central government to ensure that the liabilities incurred by the latter be also discharged. It is relevant that the mines were auctioned despite the lack of licences and approvals and the Chhattisgarh government made no policy or legislative changes to rectify this situation.

The Act of Law-Making in 2020

In 2020, the Chhattisgarh legislative assembly met for a total of 23 days over five sessions. In sum, 36 bills were introduced and passed by the state. Out of these bills, two were new laws passed by the

10. The Constitution of India, List II, Entry. 23.
11. The Constitution of India, List I, Entry. 54.
12. Gargi Verma, "Chhattisgarh Minister Writes to Centre, Seeks Removal of 5 Coal Blocks from Auction List, *The Indian Express*, June 22, 2020, *available at:* https://indianexpress.com/article/india/chhattisgarh-minister-writes-to-centre-seeks-removal-of-5-coal-blocks-from-auction-list-6470278/, (last visited on Feb. 09, 2022).
13. Manthan Adhyayan Kendra, "Commercial Coal Mining Auctions Legal, Social & Ecological Concerns around Inclusion of Mines in Mand Raigarh of Chhattisgarh" (Sept. 16, 2020) *available at:* https://www.manthan-india.org/commercial-coal-mining-auctions-legal-social-ecological-concerns-around-inclusion-of-mines-in-mand-raigarh-of-chhattisgarh/ (last visited on Feb. 09, 2022).

Chhattisgarh state legislature,[14] four, entailing appropriation, were passed and 30 amendment bills[15] were introduced and passed. None of these bills dealt with revocation of amendments. One ordinance was also passed by the state legislature in 2020, namely, the Chhattisgarh Co-operative Societies (Amendment) Ordinance, 2020.

Table 1 shares data about the number of legislative sessions held in Chhattisgarh and the bills passed:

Table 1: Legislative sessions held and bills passed in Chhattisgarh in 2020.

Session Name	Number of Bills Introduced	Number of Bills Passed
First Session	Zero	Zero
Second Session	16	16
Third Session	12	12
Fourth Session	1	1
Fifth Session	7	7

Sectors in which Bills were Passed

Education

A majority of the laws enacted by the Chhattisgarh state legislature in 2020 were in the area of education. Eight of the 36 bills, which is 22 percent of the bills introduced and passed, related to education, and seven of them dealt with universities and higher education. The law passed on school education was a new law dealing with the regulation of fees in schools.

14. The Chhattisgarh Plastic and Other Non-Biodegradable Material (Regulation of Use and Disposal) Bill, 2020 and the Chhattisgarh Private School Fee Regulation Bill, 2020 were new legislations which were introduced and passed by the Chhattisgarh state legislature in the second and third session respectively. Both the legislations and their provisions have been dealt with extensively in the department-wise segregation of the analysis.
15. The Chhattisgarh Excise (Amendment) Bill, 2020; the Chhattisgarh Zila Yojana Samiti (Sanshodhan) Bill, 2020; the Chhattisgarh Krishi Upaj Mandi (Sanshodhan) Bill, 2020; the Mahatma Gandhi Horticulture and Forestry University (Amendment) Bill, 2020; the Chhattisgarh Kamadhenu University (Amendment) Bill, 2020; the Chhattisgarh Cooperative Societies (Amendment) Act, 2020; the Chhattisgarh Vishwavidyalaya (Amendment) Bill, 2019; the Pandit Sundar Lal Sharma (Open) University, Chhattisgarh (Amendment) Act, 2020; the Chhattisgarh Kushabhau Thakarey Journalism and Mass Communication University (Amendment) Bill, 2020; the Indira Kala Sangeet Vishwavidyalaya (Amendment) Bill, 2020; the Chhattisgarh Private Universities and Commencement (Establishment and Operation) (Amendment) Act, 2020 and the Chhattisgarh Goods and Services Tax (Amendment) Act, 2020 were passed in the second session held between February-March, 2020.

    The Chhattisgarh Rent Control (Amendment) Bill, 2019; the Chhattisgarh Municipality (Amendment) Bill, 2020; the Chhattisgarh Legislative Assembly Members Salary, Allowance and Pension (Amendment) Bill, 2020; the Chhattisgarh Co-operative Societies (Amendment) Act, 2020; the Chhattisgarh Private School Fee Regulation Bill, 2020; the Chhattisgarh State Backward Classes Commission (Amendment) Bill, 2020; the Chhattisgarh State Minorities Commission (Amendment) Bill, 2020; the Chhattisgarh State Scheduled Caste Commission (Amendment) Bill, 2020; the Chhattisgarh State Scheduled Tribes Commission (Amendment) Bill, 2020; the Chhattisgarh Goods and Services Tax (Amendment) Bill, 2020 and the Chhattisgarh Vishwavidyalaya (Amendment) Bill, 2019, were passed in the third session held in August, 2020.

    The Chhattisgarh Krishi Upaj Mandi (Sanshodhan) Bill, 2020 was passed in the fourth session held in October 2020.

    The Chhattisgarh Municipality (Amendment) Bill, 2020; the Chhattisgarh Municipal Corporation (Amendment) Bill, 2020; the Chhattisgarh Krishi Upaj Mandi (Sanshodhan) Bill, 2020; the Chhattisgarh Rent Control (Amendment) Bill, 2020; the Chhattisgarh Fiscal Responsibility and Budget Management (Amendment) Bill, 2020 and the Indian Stamps (Chhattisgarh Amendment) Bill, 2020 were passed in the fifth session held in December 2020.

As education falls within the concurrent list,[16] the Chhattisgarh legislative assembly passed several amendments to the laws for setting-up and governing colleges for higher education. The amendments could be considered to be a response to the appointments of vice chancellors with a certain political flavour[17] by the governor, in her capacity as the chancellor. The passage of these bills was significantly delayed at the stage of receiving assent from the governor, who relied upon the University Grants Commission Act to claim illegality and egregiousness of the legislation. However, these amendments stood the test of the University Grants Commission Act and eventually received the governor's assent.

In 2020, the Chhattisgarh University Act, 1973 was amended twice. The first Chhattisgarh University (Amendment) Bill, 2020 inserted three main changes with regard to appointments. The first was with regard to the appointment of the vice-chancellor by the chancellor; the second inserted the mode of removal of the vice-chancellor, and the third amended Schedule II of the Act by including within it the newly formed districts of Chhattisgarh. The Pandit Sundar Lal Sharma (Open) University, Chhattisgarh (Amendment) Act, 2020 and the Indira Kala Sangeet Vishwavidyalaya (Amendment) Bill, 2020 also incorporated the same changes with regard to the mode of appointment and removal of the vice-chancellor. The matter of appointment and removal of the vice-chancellor as per the provisions of the amendment would be based on the state government's recommendations to the chancellor and would, thereby, formally deprive the governor of any say in the appointment process.

The second Chhattisgarh University (Amendment) Bill, 2020 changed the name of the Bastar University to Shaheed Mahendra Karma University, Bastar. The amendment came on the heels of the anniversary of the Jhiram Ghati Massacre.[18] This forms a part of the process of memory making, and what may even be termed by some as a process of 'distorting' history and sanctifying the image of Mahendra Karma—a Congress politician who pioneered the *Jan Jagran Abhiyan* in the Bastar Division. The *Jan Jagran Abhiyan* established special police officers (SPOs). These officers were the "backbone" of the *Salwa Judum*[19], which went from village to village threatening *adivasis* to join their ranks. The SPOs were mainly adivasi men and women, who either willingly, or by inducement or threat joined the ranks of the *vigilante force*. They killed, slaughtered, maimed, arsoned, raped and destroyed as they swept through the forests and villages of Bastar. The *Salwa Judum* was disbanded by the supreme court on July 5, 2011 by way of judgment in *Nandini Sundar* v. *State of Chhattisgarh*.[20]

16. Originally, education was a subject in the state list. In the year 1976, education was shifted to the concurrent list by the Constitution (Forty-second Amendment) Act, 1976.
17. Prior to the introduction of the bills in the state legislature, the governor in her capacity as the chancellor appointed Baldev Bhai Sharma as vice-chancellor of Kushabhau Thakarey University and re-appointed Vans Gopal Singh as vice-chancellor of Pandit Sundarlal Sharma Open University. Both the vice-chancellors appointed/reappointed have demonstrated right-wing ideology and ideological affiliations and are considered to be close to the Bharatiya Janata Party (BJP). Infact, Baldev Bhai Sharma has a history of being an editor of 'Panchjanya', a mouthpiece of the *Rashtriya Swayamsevak Sangh* (RSS) and has also written a biography of a former RSS *Sarsangh chalak*.

    K.S. Sudarshan, "Will Seek President's Views: Chhattisgarh Governor on Pending Bills", July 10, 2020, *The Hindustan Time*s: *available at:* https://www.hindustantimes.com/india-news/will-seek-president-s-views-chhattisgarh-governor-on-pending-bills/story-6mn0FTWVY2E7wmRp7eYr5H.html (last visited on Jan.13, 2022).
18. The Jhiram Ghati incident of May 25, 2013 changed the political landscape of Chhattisgarh. An entire convoy of State Congress Party members was attacked by the Naxalites (Maoists). 26 Congress party members were shot down and killed in the incident and the entire Congress leadership of the state was wiped out.
19. Nandini Sundar, "Pleading for justice", *Seminar*, 2010, *available at*: https://www.india-seminar.com/2010/607/607_nandini_sundar.htm (last visited on March 6, 2022).
20. (2011) 7 SCC 547.

The second amendment to the Chhattisgarh Universities Act in 2020 also universalised the provisions amended in Schedule II of the Act to be applicable to all new universities.

The Chhattisgarh Open University (Amendment) Act, 2020 included more courses such as life sciences, library science and insurance within the courses offered by Shri Shankaracharya Professional University with the view that vocational courses would allow students to feel empowered and enhance their prospects of gaining employment.

In another move, the Congress government vide the Chhattisgarh Kushabhau Thakre Journalism and Mass Communication University (Amendment) Bill, 2020 made changes to the original legislation and changed the name of the Kushabhau Thakre University to "Chandulal Chandrakar Journalism and Mass Communication University". Kushabhau Thakre belonged to the BJP and Chandulal Chandrakar was a journalist belonging to the Congress party in Chhattisgarh. Similarly, the Chhattisgarh Kamadhenu University (Amendment) Bill, 2020 also made changes to the basic structure of the legislation, changing the name of the university from Chhattisgarh Kamadhenu University to Dau Shri Vasudev Chandrakar Kamdhenu University. The intention of the original Act was to set apart the university from all other universities. It was named Kamdhenu to honour the university's vibrant history of participating in farmers' struggles and contributing to the agricultural and farming sector through research, invention and innovation.

The Regulation of School Fees: Ripples of the Pandemic

One of the consequences of the COVID-19 pandemic was the extraordinary pressure faced by parents of children studying in private schools. The pandemic resulted in a colossal decline of earnings of several people from different strata of the society. Schools had to switch to the virtual mode introducing e-learning to adapt to the safety needs of the times. Significant and arbitrary fee hikes were reported across private schools in the country. In fact, over 39 percent of parents of children studying in private schools in five states reported that they had to pay hiked fees for the academic year of 2020-2021.[21] Several states including Delhi, Rajasthan and Gujarat, legislated on private school fees to ensure respite to the families of children studying in these institutions.

Chhattisgarh was also one of the states which drafted and passed the Chhattisgarh Private School Fee Regulation Act, 2020 along with the Chhattisgarh Private School Fee Regulation Rules, 2020 to ensure the strict implementation of the Act. The Act prescribes for fee-committees to be constituted for a term of two years[22] and representation of parents and guardians in them so that the latter could have a say in the fees charged. These committees were set up at three levels—state, district and school. The state-level committee frames policies and issues directions around the levy of fees within private schools to guide the district and school-level committees in determining the fees of private schools.[23] The committees also have the power to hear grievances of the parents and the school administration on

21. "Of the states involved in the survey, Bihar, Chhattisgarh, Jharkhand and Uttar Pradesh issued notifications directing schools to not hike their fees or pressurise parents in making fee payments during the lockdown. Odisha issued an appeal from the CM's office requesting schools to consider reducing/deferring payment of fees. Despite notifications and pleas from state governments directing private schools to consider reduction/deferment of fees during the lockdown, 39% parents reported having to pay hiked fees for the upcoming academic year." Oxfam India, "Status Report—Government and Private Schools during Covid-19: Findings of Rapid Surveys," (September, 2020).
22. The Chhattisgarh Private Schools Fee Regulation Act, 2020, s. 6.
23. The Chhattisgarh Private Schools Fee Regulation Act, 2020, s.9.

issues concerning fees. These committees enjoy powers of a civil court in such regard.[24] By instituting penalties, the Act can penalise any member of the committee, or school or any stakeholder for violating the provisions of the Act. Thereafter, as under section 15 of the Chhattisgarh Private Schools Fee Regulation Act, 2020, the state legislature also brought into force the Chhattisgarh Private Schools Fee Regulation Rules, 2020. The rules primarily deal with the process of nomination and removal of members of the committee at the state, district and school levels. They also provide for the process of fixing the fee in each school.

The Swami Atmanand English Medium School Scheme

In November 2020, the Chhattisgarh government also launched the Swami Atmanand English Medium School Scheme. The schools impart education in English medium and are established with a view to ensuring that all children of *merit* belonging to economically weaker backgrounds have access to study in English schools and have an equal opportunity to compete for jobs. Currently, 53 schools have been launched by the state government in Chhattisgarh. Several of these schools have replaced the already existing government schools in the area, leaving children and parents in the lurch. As these schools start from senior grade, while children are still being imparted education in Hindi language upto the fifth standard, children have to struggle very hard to make the transition. This sudden change, instead of improving education in the designated areas, seems to have debilitated the existing education infrastructure.

Local Government

Seven out of the 36 legislations enacted were with regard to local administration, housing and town planning. Out of these, a fresh new legislation, *viz*. the Chhattisgarh Plastic and Other Non-Biodegradable Material (Regulation of Use and Disposal) Bill, 2020 was also passed by the Chhattisgarh state.

The Act gives the government the power to issue notifications to levy restrictions, prohibitions, regulation and management of the use, manufacture, sale, purchase, storage and distribution of non-biodegradable material in the state.[25] It also prohibits open littering of biodegradable and non-biodegradable material in any public place, drain, ventilation, shaft, pipe and fittings or any water source, or wetland[26] and burning of non-biodegradable garbage.[27] The competent authority also has the power to ensure compliance with the Act by directing the owner or occupier of any premise to pay for the costs of garbage removal and any further action if necessary. It also prescribes punishment for companies if they do not comply. Furthermore, it makes non-compliance of the Act a criminal offence to be tried summarily by a court not below the rank of the judicial magistrate first class and enhances the penalty for habitual offenders. In this context, it must be mentioned that Chhattisgarh was awarded the title of 'the cleanest state' in India.

Budget and Taxation

A total of seven bills were passed by the Chhattisgarh government in 2020 in relation to budget and budgetary allocation. Further, it passed four laws with regard to taxation in 2020. Two of them were amendments of the State Goods and Services Tax Act.

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24. The Chhattisgarh Private Schools Fee Regulation Act, 2020, s.10.
25. The Chhattisgarh Plastic and Other Non-Biodegradable Material (Regulation of Use and Disposal) Act,2020, s. 3.
26. The Chhattisgarh Plastic and Other Non-Biodegradable Material (Regulation of Use and Disposal) Bill, 2020, s. 4.
27. The Chhattisgarh Plastic and Other Non-Biodegradable Material (Regulation of Use and Disposal) Bill,2020, s.5.

Scheduled Tribes and Scheduled Caste Development

Four bills were passed by the Department of Scheduled Tribes and Scheduled Caste Development. All the amendments passed dealt with the membership of the commissions established under the respective Acts, including the Chhattisgarh State Backward Classes Commission, Chhattisgarh State Minorities Commission, Chhattisgarh State Scheduled Caste Commission and Scheduled State Scheduled Tribes Commission with a view to increasing membership within them. It provided for each commission to have six members, of which the vice-chairperson and chairperson would be appointed from among the members of such communities by the state government; as for the remaining four, it was not mandatory for them to be from the minority communities. While the Minorities Commission Amendment Act provides for the four members to be nominated from amongst eminent, qualified and dignified persons, the Scheduled Castes Commission (Amendment) Act provides for the four members to be appointed from those who have special knowledge in matters related to scheduled castes. Earlier these commissions had no more than three members who may or may not include the chairperson and vice-chairperson. This composition was seen as a hurdle to justice delivery for those who have been oppressed by casteism, communalism, socio-political and economic inequalities. In many ways, the increase of membership in the commissions responds to the civil society's demand for strengthening such commissions in Chhattisgarh, for there is a large population of religious minorities[28] in the state and a significantly high prevalence of caste-based atrocities and communal violence, particularly against Christian communities in the state. In what can only be considered a move that severely compromises the autonomy of these commissions, the amendment also includes a provision which allows for incumbency to be dependent on the state government's whim. Further, there have been no reforms in police structures and no sensitization initiatives. The lack of adequate representations continues to plague the justice system for minorities. The law against boycott has continued to remain in cold storage since 2016.[29]

Agriculture and Co-operatives

In 2020, four bills were introduced and passed by the Chhattisgarh state legislative assembly in the sector of agriculture. Three of them were amendments to the Chhattisgarh Krishi Upaj Mandi Act, 1972, which were introduced and passed in the second, the fourth and the fifth session of the assembly. In the sector of co-operatives, two amendments in the Chhattisgarh Co-operatives Societies Act were passed and also an amendment ordinance. As for the controversial farm laws which did away with the Agricultural Produce Market Committees (APMC) in all states, the Chhattisgarh government responded by declaring the entire state to be an APMC/*mandi*.

A large population of Chhattisgarh comprises farmers, agricultural labourers and those allied to agriculture. In fact, around 80 percent of employment in the state, considered to be the rice bowl of India, is dependent on agriculture. Under the Seventh Schedule (Article 246) of the Constitution,

28. As per census 2011, Chhattisgarh has a population of 2.56 crores, an increase from the figure of 2.08 crores in 2001 census. Hinduism is majority religion in the state of Chhattisgarh. Hinduism constitutes 93.25 percent of Chhattisgarh population. Islam is the second most popular religion in Chhattisgarh. Muslim population in Chhattisgarh is 5.15 lakhs, 2.02 percent of the total 2.56crores. Christian population in Chhattisgarh is 4.91 lakhs, 1.92 percent of the total 2.56 crores. Census Organisation of India, "Chhattisgargh Religion Census 2011" (2011) *available at:* https://www.census2011.co.in/data/religion/state/22-chhattisgarh.html (last visited on Feb.13, 2022).

29 The Prohibition of Social Boycott Bill, 2016.

"agriculture" is mentioned under entry 14 of the state list and "markets and fairs" are mentioned under entry 28. Agricultural marketing in most states is regulated by the APMCs or the *mandi* established by state governments under the respective APMC Acts of the state. These *mandis* were introduced in the 1950s to protect the farmers from being exploited by retailers through the scheme of the minimum support price (MSP). The *mandi* further provided a government-regulated system for the farmers and vested them with bargaining power to transact on seeds, labour and produce among other things. In many ways, the APMC and the MSP go hand-in-hand and the demand for regularised MSP has remained one of the primary demands of farmers. As an electoral promise, the Congress manifesto for election, therefore, squarely placed the fixation of MSP for paddy at Rs 2,500 per quintal and maize at Rs 1,700 per quintal.

On September 27, 2020, the president gave assent to the three farm bills, including the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, and the Essential Commodities (Amendment) Act, 2020 after they had been introduced and passed by the lower house. The Farmers Acts, particularly the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act effectively restructures the entire process of the APMC by allowing anyone with a PAN card to buy farmers' produce in the 'trade area' outside the markets notified or run by the APMCs. Buyers do not need to get a licence from the state government or APMC, or pay any tax to them for such purchase in the 'trade area'. These changes in regulations raised concerns regarding the kind of protections available to farmers in the 'trade area' outside APMC markets, particularly in terms of the price discovery and payment. Without the fixation of MSP and the absence of a parliamentary legislation to this effect, the vulnerability of the farmers only gets further compounded. The central Farm Acts also restricted the state government from levying market fee, cess or any other charges on the trade of farmers' produce outside of APMC, thereby excluding the state from charging a fee in 'trade areas'.

A special session was conducted by the Chhattisgarh assembly to extend protection to the farmers from the impact of the central laws. The Assembly passed the Chhattisgarh Krishi Upaj Mandi (Sanshodhan) Act, 2020. The Act allowed the state government to notify structures outside the APMC markets, which would include, but were not limited to, go downs, cold storages, and e-trading platforms as deemed markets, and allowed the state to levy fees, cess and other charges, since such markets were deemed to be under the fold of the APMC. This enabled the state to levy a market fee on sale of farmers' produce in such deemed markets and required the buyer have a licence. The bill declared the entire state as a market for selling agriculture produce and also nullified the centre's farm laws that allowed private players to directly buy produce from farmers while maintaining state control over the conducting of markets outside of designated APMC zones.

The Amendment Act could be seen as a move to keep all camps happy as it incorporated demands of both the state APMCs, and the private market. However, the amendment, while declaring that there will be both government and private *mandis* in the state, glossed over the realities of the declining APMC system in Chhattisgarh, and the vulnerabilities of the farmers in the absence of MSP. Notably, the MSP has until now been under the domain of executive orders of the centre. However, farmers believe that, in the absence of any parliamentary legislation to regularise the MSP, initiatives by the state government are required urgently. The Amendment Act also notably incorporates provisions of e-auction and private auction. It postponed the sale of grains to the first of December from the first of November of every year without provisioning for early yield crops. Thus, the law may have gained political traction, but it failed to respond to the needs of the farmers.

Executive Orders Addressing the Pandemic

The Chhattisgarh government did not engage in formal law-making processes to combat the COVID-19 pandemic and, unlike several states, it did not introduce any state amendments to the Epidemic Diseases Act, 1897. However, it passed the Chhattisgarh Epidemic Diseases, COVID-19 Regulations, 2020 exercising the administrative powers granted to it under sections 2, 3 and 4 of the Epidemic Disease Act, 1897. Through these regulations, Flu/COVID-19 services were mandated in all health facilities, including those governed by the state, centre, PSUs and private hospitals for screening of suspected cases, and documentation and quarantine of detected cases. These guidelines were in addition to and not in derogation of the guidelines issued by the government of India.

Particularly, the guidelines framed by Chhattisgarh vested the collectors of each district with the role and responsibility to take stock of the needs of their respective districts and to accordingly make executive decisions such as closure of schools and *anganwadis*. This decentralisation effort did not have any major impact on the ground as the larger decision-making power remained with the centre. Collectors chose to wait for the guidelines from the centre instead of exercising their own discretion.

Concluding Remarks

There are two common threads that run throughout the law-making processes and the policies adopted by Chhattisgarh in 2020: firstly, that of a deliberate and concerted move towards decentralisation of power and administrative and decision-making responsibility; and secondly, that of a move towards a more punitive framework by introducing penal provisions in several legislations. Decentralisation has been lauded as a significant step in the policy framework of the state, primarily because it takes stock of the distinct needs of each district of the state. Vesting administrative and executive powers in the most "local" stakeholder, decentralisation responds to the specific needs of the significantly large and diverse territory of Chhattisgarh. In several ways, the implementation lagged in 2020, but it has nonetheless been lauded as a positive step forward by all groups within the state. It is interesting that the policy of decentralisation also pushes back against the centre's policy on centralising and accumulating legislative, executive and administrative decision-making powers. The second thread that runs through the entire law-making process, especially those that relate to new laws and guidelines, is the insertion of penal provisions for non-compliance. Since the penal provisions are for petty crimes, they may most likely disproportionately affect those who occupy marginalised socio-economic status.

GUJARAT

Neha Pathakji[1]

Introduction

Even as studies continue to assess the Gujarat Model of Development, hailing or critiquing it, the state continues to be a forerunner in promoting economic growth of India. As one of the highly industrialised states in India, with a population share of only 4.99 percent, it contributes to about 7.9 percent of India's gross domestic product (GDP).[2] In addition to being home to the world's largest petroleum refining hub, the diamond industry, leading textile markets, engineering and chemical industries, shipbreaking yards and salt pans, the state has emerged as a favoured destination for investors. According to the Department for Promotion of Industry and Internal Trade (DPIIT), Gujarat received the highest Foreign Direct Investment (FDI) in the financial year 2020-2021 at US$ 21.89 billion and topped the states, with 30 percent of the total equity inflow.[3] Keeping pace with the centre's progressive liberalisation of the FDI policy, Gujarat sought to be a highly investor-friendly state. However, the state's performance needs to be linked to how it has addressed issues of production, land and labour. Under the Indian Constitution, land is a state subject while labour is a concurrent subject. It becomes necessary to examine how the state exercised the power vested in it to attain balanced growth, and address citizens' needs during the COVID-19 pandemic within the changing socioeconomic and political scenario. Accordingly, this survey examines the laws that were passed on the subject of land and labour in the year 2020 in the given context. The Gujarat state legislative assembly passed several other laws including the Gujarat Salaries and Allowances of Members, Speaker and Deputy Speaker of the Gujarat Legislative Assembly, Ministers and Leader of the Opposition Laws (Amendment) Act, 2020 that reduced basic salaries of the MLAs, speaker and deputy speaker, ministers and leader of the opposition by 30 percent.

For the development of the area and management of the pilgrimage at Ambaji in the state, the Ambaji Area Development and Pilgrimage Tourism Governance Act, 2020 was enacted to help provide necessary civic infrastructure through effective planning, administration, and governance.

The Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 2020

Land leasing in Gujarat is governed by three Acts: the Gujarat Tenancy and Agricultural Lands Act, 1948, the Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 and

1. Associate Professor (Law), NALSAR University of Law.
2. Government of Gujarat, "Socio-Economic Review 2019-20: Gujarat State", 34 (Directorate of Economics and Statistics, February 2020).
3. Department for Promotion of Industry and Internal Trade, "FDI in India: Annual Issue" (2020) *available at*: https://dpiit.gov.in/sites/default/files/Chapter_1.3_A_vi.pdf (last visited on April 17, 2022).

the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949. Under the provisions of these laws[4] agricultural land could not be transferred to a non-agriculturist. However, with the rise in demand for land for various industrial and developmental purposes, such restrictions were relaxed and transfer of agricultural land was allowed for bona fide industrial purposes.[5] Such purchasers must inform the collector about the purchase. If they are satisfied that the purchase is for a bona fide industrial purpose, a certificate would be issued to that effect.

As it stood originally, if industrial activity did not commence on the land acquired for that specific purpose even after three years of issue of the certificate, the same would be vested with the government free from all encumbrances and there was no provision of further sale to a third party once the purchaser defaulted. However, by virtue of an amendment in 2015, an option for further transfer was provided. The state government could, by notification in an official gazette, permit transfer of agricultural land to any nonprofit public trust established for charitable purposes in the field of health and education.[6] The purchaser had to make an application to the collector for further sale of land for bona fide industrial purposes. Such permission was granted upon payment of a premium to the tune of 40 percent *jantri* value (value determined by the government) of the land. The premium would increase to 60 percent *jantri* value if the application was received between the fifth and seventh year and to 100 percent of *jantri* value after the seventh year.[7]

The Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 2020 makes changes to the three afore-mentioned tenancy laws. The slab has now been inversed. Under the amended provisions, such permission shall be granted by the collector only upon the payment of 100 per cent of the prevailing *jantri* value if the application is made after a period of three years but before the completion of a period of five years, 60 percent between the fifth and seventh year, 30 percent after the seventh year but before ten years, and 25 percent after ten years.

The amendment also permits the sale of land in favour of any person or institution for use of such land for other than bona fide industrial purposes, including setting up an agricultural university or animal husbandry university, or facilities for education, medical education and health.[8] While permitting transfer of the land for purposes of education and health is seen as a move in favour of public interest, the inverted slab of premium is seen as problematic. It is alleged that the same will allow those promoters to profit who will benefit from the appreciation of the value of land that was purchased years ago by paying a small premium to the government.[9]

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4. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63; the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 54; the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89.
5. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63AA; the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 55; the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89A.
6. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63(1A); the Saurashtra Gharkehd, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 54(1A); the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89(1A).
7. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63AA(4A),(4B); the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 55(3A)(3B); the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89A(4A)(4B).
8. The Gujarat (Bombay) Tenancy and Agricultural Land Act, 1948, s. 63AAA; the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949, s. 55A; the Gujarat Tenancy and Agricultural Land (Vidarbha Region and Kutch Areas) Act, 1958, s. 89AA.
9. Express News Service, "Gujarat: Tenancy Bill passed in Assembly; Cong terms it 'pro-industry'", *The Indian Express,* Sep. 25, 2020, *available at*: https://indianexpress.com/article/india/tenancy-bill-passed-in-assembly-cong-terms-it-pro-industry-6612001/ (last visited on March 7, 2022).

The Gujarat Land Grabbing (Prohibition) Act, 2020

Ensuring equity of ownership and providing for certitude of title have proven to be challenging areas of land governance and regulation. The ever-growing demand for land coupled with appreciation in its value, has encouraged land grabbing.[10] In order to tackle land grabbing by unscrupulous elements, the Gujarat Land Grabbing (Prohibition) Act, 2020 (hereinafter referred to as the Land Grabbing Act) was enacted on October 8, 2020 and was retrospectively operable from August 29, 2020. After Andhra Pradesh, Assam and Karnataka, Gujarat is the fourth state which has enacted an Act to deal with land grabbing.

The Act defines land grabbing as every activity of occupying land without lawful entitlement and with a view to illegally take possession of such land, whether with or without the use of force, threat, intimidation and deceit.[11] A land grabber is any person who directly or indirectly takes illegal possession of land and constructs unauthorised structures on it; or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation. A land grabber could be an individual, a group of persons, a company or a religious or charity organisation. The definition also includes a successor-in-interest who may have purchased the land in good faith or inherited the land. The land grabbed may belong to the government, a public sector undertaking, a local authority, a religious or charitable institution or a private person. The Act declares that land grabbing is an unlawful activity, whose practice is prohibited, and a punishable offence.[12]

A complaint of land grabbing has to be made to the district collector having jurisdiction over the area where the disputed land is situated. The complaint shall be investigated by a seven-member committee constituted by the collector, who will appoint an inquiry officer. The officer has to report whether a prima facie case exists. Only if the inquiry officer confirms that such a case exists, will the committee initiate further action, including ordering registration of a first information report (FIR). The police must register the FIR within seven days of the committee's order. To ensure speedy enquiry into an alleged act of land grabbing and for speedy trial of ownership and title disputes and swift restoration of the grabbed land to the rightful owner, the Act establishes special courts, which are mandated to dispose of matters preferably within six months. Both the collector and the special court have the power to take suo moto cognisance of any land-grabbing case. The Land Grabbing Act stipulates a minimum punishment of 10 years, which could extend to 14 years, and a fine, which could be equal to the value of such properties. The decision of the court is final and the Act does not provide for an appeal, a revision or review. According to the available reports, the Gujarat government has registered 345 FIRs against 1,178 people for land grabbing, and chargesheets have been filed against 190 persons.[13]

On the face of it, the Land Grabbing Act promises to protect the interests of small-farmers and citizens from the fraudulent claims of the land mafia by providing that disputed land titles and fraudulent claims will be resolved by special courts in a time-bound manner. On closer scrutiny, several substantive and procedural infirmities have been identified in the Act.

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10. Since the Gujarat Legislative Assembly was not in session at that time, the Act was initially passed through an ordinance, which has now been repealed and replaced with this Act.
11. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 2(e).
12. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 4.
13. Express News Service, "Anti-land Grab Act in Gujarat: 345 FIRs filed against 1,178 people in one year" *The Indian Express,* Aug. 19, 2021, *available at*: https://indianexpress.com/article/cities/ahmedabad/anti-land-grab-act-in-gujarat-345-firs-filed-against-1178-people-in-one-year-7460523/ (last visited on Nov. 24, 2021).

Suspect Constitutional validity

Article 13 enjoins the state from making any law which infringes on the fundamental rights guaranteed under part III of the Constitution and states that any law made in contravention of the rights shall, to the extent of contravention, be void. Under section 9(1) of the Land Grabbing Act, a special court is empowered to take cognisance of and try every case arising out of any alleged act of land grabbing whether before or after the commencement of this Act. The Act thus has a retrospective effect, which is seemingly in breach of article 20 of the Constitution by allowing for post-facto punishment. The constitutional validity of the Land Grabbing Act was challenged in the high court of Gujarat in February 2021.[14] Nearly a hundred petitions challenging this law have been filed before a division bench headed by the chief justice of Gujarat.[15]

Conflates the Landless and Land Mafias

Another major criticism that has been levelled against this enactment is that it fails to distinguish between land mafias and landless/homeless persons who may be in occupation of land. This is evident when one refers to the very definition of land grabbing as provided in section 2(e) of the Land Grabbing Act. The term land grabbing broadly recognises any activity of occupying land without a lawful entitlement and with a view to illegally taking possession of such land, whether with or without the use of force, threat, intimidation and/or deceit. Thus, even peaceful possession of land could amount to land grabbing. It is, therefore, feared that this definition may result in even poor and landless people facing charges of land-grabbing for occupying a vacant land which they do not own. Mobile street vendors who might be occupying land for a temporary period for the purposes of carrying out their livelihood could be hauled up under such provisions. Thus, the broadly scoped definition of land grabbing when coupled with the quantum of punishment may inadvertently lead to criminalising poverty. Consequently, an Act which is supposedly pro-poor and pro-citizen, may end up being an anti-poor law.

Furthermore, while adopting stringent measures to curb the menace of land grabbing by miscreants, the Land Grabbing Act lost sight of other existing laws. For instance, the Act stands in direct conflict with the central government legislation on the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, which provides for regulation of street vending. The Act was enacted to protect street vendors from police extortion and eviction threats from the administration. The said Act recognised occupational rights of the street vendors, who were sometimes perceived as encroachers before the law. However, the Land Grabbing Act, by casting its net wide, has yet again entrapped street vendors, thereby negating the recognition accorded to them under the Street Vendors Act. Similarly, the scope of the Land Grabbing Act can also be extended to forest dwellers and scheduled tribes, whose rights of self-cultivation and habitation have been recognised under the Forest Rights Act, 2006. Thus, provisions of the Land Grabbing Act have the potential of hindering the process of legalising and regularising land-holding by indigenous communities.

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14. Satish Jha, "Constitutional validity of Gujarat Land Grabbing Act challenged in High Court", *Deccan Herald*, Feb. 13, 2021, *available at*: https://www.deccanherald.com/national/west/constitutional-validity-of-gujarat-land-grabbing-act-challenged-in-high-court-950725.html (last visited on Nov. 24, 2021).
15. Express News Service, "Gujarat Land Grabbing (Prohibition) Act: HC suggests state to consider Amendments", *The Indian Express*, Nov. 26 2021, *available at*: https://indianexpress.com/article/cities/ahmedabad/gujarat-land-grabbing-hc-amendments-7641855/ (last visited on Dec. 2, 2021).

Conflating Criminal and Civil Matters

Since the land covered by the Land Grabbing Act is not limited to encroachment on government land but also extends to private land, the provisions of the Act can be conveniently invoked in matters of property disputes between private parties. Such application is worrying on two counts: first, the provisions of the Land Grabbing Act when read with the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as PASA) provide private parties an opportunity to misuse state machinery of arrest and detention by initiating criminal proceedings instead of resorting to civil proceedings. For instance, in a matter before the High Court of Gujarat[16], provisions of PASA were invoked together with the Land Grabbing Act in a dispute between a landlord and his tenant. The complaint primarily emerged from the fact that the complainant-owner of the plot did not approve of certain persons, including the present petitioner, visiting his tenant. This led to a dispute for vacating the premises, and it is against this background that the provisions of the Land Grabbing Act were invoked. The petitioner was treated as 'a property grabber' and named as an accused along with four others in the FIR filed under PASA. The single judge bench of the high court voiced its concerns regarding abuse of the Land Grabbing Act given that an offence under this Act could also attract detention under PASA. Taking cognisance of the silence of the government on this question and after perusing the FIR and other material on record, the detention order of the petitioner was quashed. The matter highlighted the overlap between the property grabbing provisions of PASA and the land-grabbing sections under the Land Grabbing Act.

Second, under section 9(1), read with section 17 of the Land Grabbing Act, primacy has been accorded to the special court by providing that unless declared valid by this court all transactions of alienation shall be null and void, despite pronouncement of orders or decrees by a competent court or by operation of the law of limitation. Such retrospective operation of prohibition on alienation of grabbed land amounts to an overriding effect and leads to reopening of matters on which private parties may have already got a resolution after long-drawn legal battles. Thus, the Land Grabbing Act has the effect of unsettling agreements, partitions, transactions of alienation of grabbed land by subjecting such transactions to the provisions of this Act even when such alienations had taken place prior to the date of the Act coming into force. Such disputes have already begun to surface before the courts. For instance, two petitioner brothers moved the high court seeking stay orders against criminal proceedings against them under the Land Grabbing Act. The dispute was about the land which, according to the petitioners, was granted by the government to their great grandfather as a part of the refugee settlement scheme and on which there was an ongoing civil dispute.[17] Once the prima facie case of land grabbing was established, the burden of proof was placed on the accused to prove that they were not land grabbers.[18] In other words, once the prima facie case of land grabbing is established by the state, the brunt of establishing that the Act did not apply has been placed on the accused. This is especially so because the Act does not specify any standard of evidence for establishing a prima facie case.

Another striking feature of the Land Grabbing Act is the unquestioned supremacy of the special court established under its provisions. Not only is it vested with powers to try every case of land grabbing or

16. *Jagdshbhai @Jago Ratilal Mehta* v. *State of Gujarat* C/SCA/10778/2021, order dated Sep. 01, 2021.
17. TNN, "Gujarat high court stays land grabbing charges" *The Times of India,* Aug. 25, 2021, *available at*: https://timesofindia.indiatimes.com/city/ahmedabad/hc-stays-land-grabbing-charges/articleshow/85606929.cms (last visited on Nov. 24, 2021).
18. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 11.

to determine title and ownership of such land grabbed[19] irrespective of the fact that a parallel civil or criminal litigation may be pending before other courts, but it is also empowered to reopen matters that may have been decided upon before the commencement of this Act.[20]

While section 202 of the Gujarat Land Revenue Code, 1879 and the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 provide for a summary procedure of eviction of an unauthorised occupant, there is no such provision in the Land Grabbing Act. In other words, whilst these Acts provide for a proper procedure for eviction as issue of notice, adjudication by a competent officer, and appeal against the order, section 9(8) of the Land Grabbing Act empowers the special court, to peremptorily restore the possession of the land grabbed after evicting by force if it so deems fit. The special court, unlike the authorities under the 1879 Code and 1972 Act, has been conferred the power to follow its own procedure notwithstanding anything in the Code of Civil Procedure 1908, with the only safeguard being that the said procedure shall not be inconsistent with the principles of natural justice and fair play.[21] There is no provision for appeal, and such use of force by the state may render the writ power also infructuous. While the Land Grabbing Act, to all intents and purposes, was enacted to provide protection to the people from the machinations of land sharks, it is increasingly proving to be an anti-poor and confiscatory legislation.[22]

Labour Laws

Labour is a subject in the concurrent list of the Constitution, which means that both the centre and the states can make laws on it. In case there is repugnancy between the law passed by the state legislature and the one passed by the union government, the central law prevails. However, a provision of a state law may override that of a central law if the former receives the assent of the President. Following the onset of the pandemic in March 2020 and the subsequent lockdown, several states were eager to ameliorate the financial situation by reviving trade and commerce and promoting economic growth. Citing compelling economic circumstances prevailing due to COVID-19, the Gujarat state legislative assembly passed four Bills on labour and employment, which diluted existing provisions favouring labour in the Industrial Disputes Act, 1947; the Factories Act, 1948; and the Contract Labour (Regulation and Abolition) Act, 1970, tilting the legislative scale in favour of employers and industrial establishments.[23]

Under the Industrial Disputes Act, 1947, establishments having 100 or more workers are required to seek prior permission of the state government before closure or layoff or retrenchment.[24] The Industrial Disputes (Gujarat Amendment) Bill, 2020 however raised this limit and made it applicable to establishments with 300 or more workers. Similarly, the Factories (Gujarat Amendment) Bill, 2020

19. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 9(2).
20. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 9.
21. The Gujarat Land Grabbing (Prohibition) Act, 2020, s. 9(3).
22. Also *see* Varsha Bhagat-Ganguly and Rejitha Nair, "Criminalising 'tool' created, name: Gujarat Land Grabbing Prohibition Act 2020", Mar. 14, 2021 av*ailable at*: https://www.counterview.net/2021/03/ciminalising-tool-created-name-gujarat.html (last visited on Nov. 25, 2021); Vinay Sachdev and Dhruvil Kanabar, "Criticism of the Gujarat Land Grabbing (Prohibition) Act, 2020", Jun. 28, 2021, *available at*: https://bhattandjoshiassociates.com/criticism-of-the-gujarat-land-grabbing-prohibition-act-2020-part-2-2/ (last visited on Nov. 25, 2021).
23. The amendments were initially routed through an ordinance. The same has now been repealed and the Bills received presidential assent on January 1, 2021.
24. The Industrial Disputes Act, 1947, s. 25K.

as well as the Contract Labour (Regulation and Abolition) (Gujarat Amendment) Bill, 2020 enhanced the existing threshold limits of workers before the requirement of prior permission would be applicable to them.

Further, section 25N of the Industrial Dispute Act, 1947 has also been modified to do away with the provision of wages for the notice period. Prior to the amendment, workers needed to be given three months' notice or wages for the notice period before retrenchment. However, post the amendment workers can be retrenched only after giving them three months' notice, which is a favourable change that does not allow sudden dismissals from service. Additionally, section 36C has been inserted in the Industrial Disputes Act, 1947 and section 5A to the Factories Act, 1948 to enable the state government to exempt new establishments or undertakings for a period of 1000 days from all or any of the provisions of both the said central Acts.

Further, sections 51, 54, 55 and 56 of the Factories Act, 1962 limited maximum number of daily and weekly work hours and stipulated interval for rest hour. The state government invoked section 5 of the Factories Act, 1962 and issued notifications granting exemption to all factories registered under the Act from obligations mandated under sections 51, 54, 55 and 56 of the Act.[25] The first notification was issued on April 17, 2020[26] by the Labour and Employment Department of Gujarat, which was to provide relaxations from the aforementioned obligations under the Factories Act from April 20, 2020 till July 19, 2020. Later, these relaxations were further extended for another three months from July 20, 2020 to October 19, 2020 by the second notification on July 20, 2020.[27] The notifications revised the maximum limit of working hours to 12 hours per day and 72 hours per week, and fixed overtime wages at a rate proportionate to the ordinary rate of wages.

The constitutional validity of these notifications was challenged before the supreme court by the Gujarat Mazdoor Sabha.[28] Ruling in favour of the petitioners, the supreme court quashed the notifications in question that legitimised the subjection of workers to onerous working conditions at a time when their already feeble bargaining power stood further whittled by the pandemic. Whilst the court took cognisance of the fact that the government was attempting to address financial exigencies caused by an unprecedented pandemic, it categorically held that financial losses could not be offset on the weary shoulders of labour.

Law and Policy

As per the registration data from Directorate of Industrial Safety & Health, the number of working factories registered under Factories Act, 1948 in the state increased from 31504 at the end of 2017 to 34081 at the end of 2018.[29] For an industrial state like Gujarat, which witnesses a constant influx of migrant workers, it is imperative to put in place laws that ensure protection and welfare of labour.

25. Section 51 limits weekly hours to maximum forty-eight hours, section 54 limits daily hours to maximum nine hours, section 55 provides for at least half an hour of interval for rest between shifts and section 56 prohibits spreading over work period, including interval for rest, beyond ten-and-a-half hours in any day.
26. Notification no. GHR/2020/56/FAC/142020/346/M3.
27. Notification no. GHR/2020/92/FAC/142020/346/M3.
28. AIR 2020 SC 4601.
29. *Supra* note 2.

In a bid to attract new investments and create employment, the state government moved the above-mentioned reforms in labour laws, which offered regulatory relaxations. Consequent to the amendment in the Industrial Disputes Act, industrial establishments with less than 300 workers can now 'hire and fire' workers or even close down without seeking prior permission from the state government. Such upward revision was carried out in the number of workers in the Factories Act and the Contract Labour Act as well. As per the claims of the government, the amendments would encourage demand for labour. It was claimed that industrial establishments and factories were currently under-hiring and over-working existing employees by limiting the recruitment under the statutory threshold to avoid falling within the ambit of the respective Acts. With the upward revisions in the thresholds, more workers would be offered employment.

To summarise, though the state government saw itself as a facilitator who was putting growth back on track by striking a balance between the industries and the workforce, the amendments evidently tilted heavily in favour of industries and employers. Even as labour continued to be distressed and faced huge difficulties during the COVID-19 countrywide lockdown, the government's misconceived responses that aimed at reducing the regulatory burden of employers and industry only resulted in further increasing the vulnerabilities of workers.

Conclusion

Most of the legislation passed during the evaluation period are deeply problematic not just in the norms incorporated in the statutory provisions but also in terms of the larger policy implications they hold for the citizens. For a state that boasts of being a forerunner in economic development, it is critical to reflect on the outcomes of its policies and how efficiently it functions as a welfare state. Gujarat's Industrial Policy 2009 pitches for catalysing robust, sustainable and inclusive growth. But does it actually walk the talk? Reducing the protection offered through labour regulations at a time when labour was most vulnerable (during the pandemic) bespeaks of an indifference to the plight of the working class. If the objective is to create employment opportunities, it needs to be asked at whose cost is such opportunity being created. Similarly, stringent laws that can activate the state machinery to effect instantaneous eviction of occupants from land without observing the procedural safeguards that would help distinguish the wrongful from the wronged only renders marginalised and impoverished communities more vulnerable.

JHARKHAND

Prerna[1]

Introduction

The Constitution of India entrusts state legislatures with the responsibility to make laws for their states. State legislatures, thus, have the power to enact laws related to agriculture, public health, education, local government, police and other such subjects in the state list and concurrent list of the Constitution's seventh schedule. Given the importance of state governments in the Indian federal system, it was decided to look into the legislative output of various states in the Indian polity for the calendar year 2020. The present survey focuses on the legislative output of the state of Jharkhand. For the survey, all the bills enacted, ordinances promulgated, and resolutions passed in 2020 were examined. It is to be noted that much of the information related to the reportage of legislative proceedings and documents of the Jharkhand legislative assembly were not published on the Jharkhand Vidhan Sabha website.[2] Thus, for the present survey, wherever primary data were not available, newspaper reports and other secondary sources were also relied upon.

Performance of the Jharkhand Legislative Assembly: An Overview

In 2020, the Jharkhand state legislature met for four sessions. The total number of sitting days was 21, of which 17 were before the lockdown, and four, after.

The State legislature passed only 12 bills in the year. Of these, four were appropriation bills, and the rest on taxation, labour and health.

The hours spent on legislative activity were minimal in 2020. All bills were passed through a voice vote on the same day as the day of their introduction.[3] There was no discussion on the legislations and no reference to select committees, despite opposition leaders' requests to send three bills (the Motor Vehicles Amendment Bill,[4] the Mineral-Bearing Land Pandemic Cess Bill[5] and the Physiotherapy Council Bill)[6] to select committees. The same request was also turned down by the speaker of the

1. Assistant Professor (Law), NALSAR University of Law.
2. The official and highly limited data released by the Jharkhand Assembly is *available at*: https://jharkhandvidhansabha.nic.in/, (last visited on Dec. 16, 2021).
3. 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 Jan. 25, 2022).
4. The Jharkhand Motor Vehicle Taxation (Amendment) Bill, 2020.
5. The Jharkhand Mineral Bearing Lands (Covid-19 Pandemic) Cess Bill, 2020.
6. The Jharkhand State Council of Physiotherapy Bill, 2020.

House.[7] No select committees were constituted to scrutinise some of the critical bills passed by the state legislature. The analysis of the legislative performance of the state suggests that there was no detailed scrutiny of any bills passed in the year. This, coupled with the fact that there were fewer working days in the calendar year 2020 due to the pandemic-prompted lockdown, shows that the state's legislature barely spent any time scrutinising the legislative proposals brought before them. In 2020, Jharkhand enacted seven legislations, of which some are closely examined in the subsequent sections.

A Critical Analysis of Relevant Enactments

Taxation

The economic slowdown resulting from the lockdown prevailing in 2020 impacted the revenue receipts for all the states in India. It has been reported that in 2020-2021, Jharkhand's total revenue receipts (excluding borrowings) fell short of the state's estimated budget by Rs 8,363 crore (a reduction of almost 11 per cent).[8] Moreover, in this year, Jharkhand incurred a huge financial deficit, owing to the union government defaulting on the payment of GST compensation and payments due to the state under various other heads.[9] Thus, most of the legislations enacted by the Jharkhand legislature in the year 2020 were motivated by the need to augment the state's revenue receipts.

In view of the COVID-19 pandemic, the central government permitted states to increase their fiscal deficit limit from three percent of GSDP to five percent in 2020-2021.[10] However, it is to be noted that of this two percent increase, one percent remained conditional upon the implementation of reforms by states in the following four areas: (i.) one nation one card, (ii.) ease of doing business, (iii.) urban local body/utility and (iv.) power distribution. Since Jharkhand did not undertake any of the four aforementioned reforms, it was ineligible to avail itself of the additional one percent reform-linked borrowing.[11] Therefore, the union government allowed Jharkhand to increase its fiscal deficit only up to four percent of the GSDP during the financial year 2020-2021. To raise the earlier statutory cap of three percent, the state government amended the Jharkhand Financial Responsibility and Budget Management Act, 2007. Amendments to the Jharkhand Goods and Services Tax Act also correspond to the GST council's recommendation.[12] Different measures were proposed to generate extra revenue due to the COVID-19 situation, including charging a cess on mineral-bearing lands. These will be discussed in detail in a subsequent section.

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7. TNN, "House debates Covid scenario, passes eight bills", *Times of India*, Sep. 23, 2020, *available at*: http://timesofindia.indiatimes.com/articleshow/78264633.cms (last visited on Feb. 01, 2020).
8. Amitabh Srivastav, "Why a Centre-State logjam in Jharkhand is blocking a higher coal production", *India Today*, Nov. 17, 2021, *available at:* https://www.indiatoday.in/india-today-insight/story/why-a-centre-state-logjam-in-jharkhand-is-blocking-higher-coal-production-1877889-2021-11-17 (last visited on Jan. 17, 2022).
9. Anand Dutta, "'Entire India could plunge into darkness' — Soren warns of coal blockade after row with Centre", *The Print*, Oct. 19, 2020, *available at*: https://theprint.in/politics/entire-india-could-plunge-into-darkness-soren-warns-of-coal-blockade-after-row-with-centre/526585/ (last visited on Jan. 22, 2022).
10. Press Information Bureau, "Aatmanirbhar Bharat Part 5: Government Reforms and Enablers", Ministry of Finance, May 17, 2020, *available at:* https://pib.gov.in/PressReleasePage.aspx?PRID=1624661 (last visited on Jan. 26, 2022).
11. Suyash Tiwari and Saket Surya, "State of State Finances, *PRS Legislative Research*, Nov. 2021: *available at*: https://prsindia.org/policy/analytical-reports/state-state-finances-2020-21 (last visited on Jan. 25, 2022).
12. *Id.* at 17.

Land and Natural Resources

The year witnessed a constant tussle between the centre and the state over the jurisdiction of land and natural resources. But, before getting into the specifics of the state enactment concerning land and natural resources, it would be necessary to note that the central government in 2020 pushed for various amendments to the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957, the primary law governing mining in India. In 2020, the central government promulgated the Mineral Laws (Amendment) Ordinance 2020. It thereafter passed the Mineral Laws (Amendment) Act, 2020, which effectively amended the Mines and Minerals (Development and Regulation) Act, 1957, and the Coal Mines (Special Provisions) Act, 2015.[13] The imperious nature of the exercise can be deduced from the fact that the mines ministry asked various stakeholders to evaluate the proposals and send their comments and suggestions in just ten days, which is less than the minimum window under any pre-legislative consultation policy. One of the most contentious highlights of the amendments to the MMDR Act was the power to auction coal mines, which has effectively been privatised through "open-access auctioning" of coal blocks. The entire process of auctioning coal blocks has thereby been centralised.[14] The amendment empowered the central government to auction mines that the states had failed to auction themselves.[15] The justification for the move was that the centre wanted to help the states get money, while they faced severe economic hardship due to the pandemic.[16] Moreover, according to the coal ministry, these amendments would enable "*seamless mining operations*" by ensuring that environment and forest clearances and other approvals get automatically transferred to the new owners of mineral blocks for a period of two years from the date of grant.[17] However, experts note that with this amendment, the central government has practically turned environmental clearances into a cursory affair by violating provisions of both the Forest Rights Act and the Panchayats (Extension to Scheduled Areas) Act, 1996.[18]

Despite these reservations, the central government, without any prior approvals from the state government, included nine coal blocks from Jharkhand in the first round of auctions in June 2020. The state government asserted that the centre's decision to proceed with the auction ignoring the concerns voiced by Jharkhand should be seen as "*a blatant disregard for cooperative federalism*."[19] Following this action of the centre, the Jharkhand government filed a writ petition in the supreme court of

13. The ordinance was replaced by the Mines and Minerals (Development and Regulation) Amendment Bill, 2021, passed in March 2021.
14. Special Correspondent, "Narendra Modi launches auction process for 41 coal blocks for commercial mining", *The Hindu*, June 18, 2020, *available at*: https://www.thehindu.com/news/national/narendra-modi-launches-auction-process-for-41-coal-blocks-for-commercial-mining/article31858048.ece (last visited on Feb. 15, 2022).
15. Gerard de Souza and Chetan Chauhan, "Centre proposes to take over mine auction, some states oppose", *Hinustan Times*, March 4, 2021, *available at*: https://www.hindustantimes.com/india-news/centre-propose-to-take-over-mine-auction-some-states-oppose-101614757311685.html (last visited on Feb. 15, 2022).
16. *Ibid.*
17. Press Information Bureau, "Parliament Passes The Mineral Laws (Amendment) Bill, 2020, Bill to transform Indian mining sector: Prahlad Joshi", Ministry of Coal, March 12, 2020, *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=1606090 (last visited on Feb. 16, 2022).
18. Sushmita, "The devastating cost of India's push towards a coal-based economic recovery", *The Caravan*, July 31, 2021, *available at*: https://caravanmagazine.in/environment/devastating-cost-india-coal-recovery (last visited on Feb. 18, 2022).
19. Satyasundar Barik, "Hemant Soren says Centre's decision on coal mine auction a 'disregard of cooperative fedearlism'", *The Hindu*, June 21, 2020, *available at*: https://www.thehindu.com/news/national/hemant-soren-says-centres-decision-on-coal-mine-auction-a-disregard-of-cooperative-federalism/article61666347.ece (last visited on Feb. 16, 2022).

India challenging the Central government's decision of holding the coal blocks auction.[20] The petition, among other things, stresses the need for a "fair assessment of the social and environmental impact on the huge tribal population and vast tracks of forest lands of the State which are likely to be adversely affected."[21] The petition is still pending before the supreme court, which, in its interim order, has made any action of the union in the present matter subject to the court's orders.[22] This means that the supreme court may cancel the allocation process in the final judgment if the auctions are found to be illegal. Thus, the saga of coal block allocation continues to be a seriously contested issue in Jharkhand.

The Jharkhand Mineral Bearing Lands (COVID-19 Pandemic) Cess Act, 2020[23] was the relevant state enactment concerning land and natural resources. This controversial piece of legislation raises several questions about the allocation of taxing powers between the centre and states, especially when it comes to the power to levy cess on mineral resources and mineral-bearing land. The aforementioned Act, was enacted on November 18, 2020, and extended to the entire state of Jharkhand in order to enable the state government to levy a cess of ₹10 on every tonne of coal despatched and ₹5 on every tonne of iron ore sold. The Act also specified the cess payable on minerals such as bauxite, limestone and manganese, which was fixed at ₹20, ₹10 and ₹5 per tonne of dispatch, respectively.[24]

Before the Assembly passed the Act, it was promulgated as an Ordinance[25] in order to "*shore up revenue for the State*".[26] The official notification issued on July 06, 2020, stated that:

> "[C]ircumstances exist which render it necessary to take immediate action to promulgate an Ordinance to provide the levy of cess on mineral bearing land for the rehabilitation and employment of labourers and migrant labourers, creating infrastructures in the field of cottage/ village Industries, MSME, creating employment opportunities, mitigating the hardships caused due to loss of jobs, augmenting the existing health infrastructures and *for other necessary purposes* in Jharkhand arising out of disaster by way of COVID-19 pandemic,"[27] (emphasis supplied)

It is critical to know that income derived from mineral royalties is a significant contributor to the revenues generated by the state. Even so, the state's mineral wealth data suggest that the revenue receipts for the state during the period between April-October, 2020 declined by almost 16 percent in comparison to the same period in the the previous year.[28] Thus, faced with a revenue shortfall and a necessity to revise spending priorities amidst the pandemic, the state decided to promulgate

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20. Harshit Sabarwal, "Jharkhand moves SC against Centre's decision to auction coal blocks for commercial mining", *Hindustan Times*, June 21, 2020, *available at*: https://www.hindustantimes.com/ranchi/jharkhand-moves-sc-against-centre-s-decision-to-auction-coal-blocks-for-commercial-mining/story-lK1ljWZYtFboJAKiDV2i6I.html (last visited on Feb. 16, 2022).
21. Scroll Staff, "SC issues notice to Centre on Jharkhand's petition against coal mining auction", *The Scroll*, July 14, 2020, *available at*: https://scroll.in/latest/967460/sc-issues-notice-to-centre-on-jharkhands-petition-against-coal-mining-auction (last visited on Feb. 16, 2022).
22. Mehal Jain, "Supreme Court Makes Jharkhand Coal Block Auction Provisional and Subject to Orders", *Live Law*, Nov. 6, 2020, *available at*: https://www.livelaw.in/top-stories/jharkhand-coal-block-auction-while-not-holding-off-impending-auction-sc-says-all-action-would-be-provisional-subject-to-further-orders-165598 (last visited on Feb. 18, 2022).
23. The Jharkhand Mineral Bearing Lands (Covid-19 Pandemic) Cess Act, 2020 (Act 6 of 2020).
24. The Jharkhand Mineral Bearing Lands (Covid-19 Pandemic) Cess Act, 2020 (Act 6 of 2020), ss. 2(4) and 3(1).
25. The Jharkhand Mineral Bearing Lands (Covid-19 Pandemic) Cess Ordinance, 2020 (Jharkhand Ordinance 1, 2020).
26. PNS, "Govt brings in cess to boost revenue collection", *The Pioneer*, June 18, 2020, *available at*: https://www.dailypioneer.com/2020/state-editions/govt-brings-in-cess-to-boost-revenue-collection.html (last visited on Jan. 19, 2022).
27. *Supra* note 25.
28. *Supra* note 11.

an ordinance and eventually enacted it into a legislation to enable the state government to collect a 'pandemic cess' on mineral-bearing lands.

Significantly, even though the proprietary title to major minerals vests with the state government, their ownership is subject to the laws governing regulation and control of mining enacted by the central government.[29] The MMDR Act, 1957, the relevant central legislation on the matter, confers on state governments the right to allow exploitation of mineral resources by grants of licenses and lease according to the rules specified therein.[30] The central Act includes different schedules that prescribe rates of dead rent and royalties applicable for certain minerals. Thus, regarding the major minerals mentioned in Schedule 1, state power has been limited to holding possession, receiving royalties and a few other payments like dead rent. The power to determine royalty rates also lies with the union government, and the state governments have no say in the matter.

Meanwhile, a private steel corporation has moved the supreme court challenging the constitutional validity of the cess imposed by the *Jharkhand Pandemic Cess Act*, 2020.[31]At present, the apex court has only admitted the petition that challenges the state government's right to levy such a cess. It remains to be seen how the apex court decides the devolution of fiscal powers between the centre and the states.

The crucial question is whether the state government had the right to enact legislation to impose a cess on mineral resources and mineral-bearing land, especially when it was already collecting royalties on such resources and land. Any deliberation on this issue requires a close examination of the federal structure of India concerning mineral resources. This section looks at how our Constitution divides the powers and functions over resources and resource-development between the states and the union.

The following entries of the union and the state list in Schedule VII of the Constitution of India spell out the inter se jurisdiction between centre and states to regulate and develop mines and mineral resources.

Union List	State List
Entry 52 Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.	**Entry 23** Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
Entry 54 Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.	**Entry 49** Taxes on lands and buildings.

29. Ligia Noronha, Nidhi Srivastava, *et al.*, "Resource Federalism in India: The Case of Minerals" 44(8) *Economic and Political Weekly* 53 (2009).
30. Mines and Minerals (Development And Regulation) Act, 1957 (Act 67 of 1957).
31. Bureau, "Covid cess: Tata Steel moves SC against Jharkhand govt", *The Hindu Business Line*, Dec. 18, 2020, *available at*: https://www.thehindubusinessline.com/companies/covid-cess-tata-steel-moves-sc-against-jharkhand-govt/article33365872.ece (last visited on Jan. 21, 2020).

Union List	State List
Entry 96 Fees in respect of any of the matters in this List, but not including fees taken in any court.	**Entry 50** Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
Entry 97 Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.	**Entry 66** Fees in respect of any of the matters in this List, but not including fees taken in any court.

Entry 23 of the state list makes the imposition of taxes on 'mineral rights' predominantly the prerogative of the state in which they are located. However, this power reposed in the states is not absolute as it has been made subject to any limitations imposed by any law enacted by the parliament.[32] Therefore, while the states own the mineral resources located within their territory, the jurisdiction to regulate and develop mines and minerals resides with the centre.[33]

In Jharkhand, both central and the state government collect revenue by imposing varied taxes and levies on minerals under different legislations. The primary source of revenue for the state government has been royalty, dead rent, water and labour welfare cess, sales tax, environmental protection fees, prospecting and mining lease fees. On the other hand, for the centre, the revenue collection happens in excise duty, forest conservation charges and corporate taxes. "Royalty" is a compensatory payment made to the owner of a property in lieu of allowing another to exploit that property.[34] Significantly, the Central government fixes the royalties payable to states on leasing such mineral rights as per Section IX of the MMDR Act.[35]

There has been a constant demand by mineral-producing states to revise royalty rates. However, of late, these demands are being made more frequently than before because mineral producing states find there is no match between the royalty provided to them and the gains earned by the centre in regulating and developing mineral resources and land.[36] This loss is accentuated by the fact that the centre rarely revises the royalty rates. For instance, in the case of coal, which accounts for one of the largest shares of royalty revenue for the state of Jharkhand, the royalty rates have been revised only four times between 1971-1973.[37] Since the nationalization of the sector, most coal-producing states like Jharkhand, Orissa and West Bengal have been particularly hard-hit due to the non-revision of these royalty rates. This non-revision has caused stagnation of revenue in many of these already backward states.[38] West Bengal too has claimed to have suffered huge losses of revenue due to the existing royalty regime prevalent in the country. Resultantly, West Bengal has levied a cess on its mineral-bearing lands through state

32. *Supra* note 29 at 53.
33. *Id*. at 54.
34. Indian Bureau of Mines, "Mineral Royalties" (Ministry of Mines, 2011).
35. Section 9(3) of the MMDR Act stipulates that the central government may, by notification in the official gazette, amend the second schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification.
36. *Supra* note 29 at 57.
37. Hemalata Rao, Devendra Babu, *et al*, "Economic and fiscal impact of royalty rates of coal and lignite in India." (Institute for Social and Economic Change, 2003), *available at*: https://niti.gov.in/planningcommission.gov.in/docs/reports/sereport/ser/stdy_coal.pdf (last visited on Jan. 21, 2020).
38. *Id*. at 79.

legislation.[39] At present, West Bengal levies a cess at the rate of 25 percent per tonne on coal dispatched from the state. This makes the consolidated coal prices in West Bengal the highest in the country.[40] Thus, Jharkhand is not the first state to levy such a cess on mineral-bearing land; several other states also have done so to augment their revenue sources.[41]

The question of the constitutional validity of such state enactments levying cess on mineral-bearing lands has been brought before various courts from time to time. The judicial position on the issue has not been constant as courts have taken divergent positions at different points of time on whether to consider such a state-imposed cess on mineral-bearing land as unconstitutional or not.[42]

The constitutional validity of cess levied on mineral-bearing land was first discussed in *Hingir-Rampur Coal Co.* v. *State of Orissa*.[43] The case pertained to the validity of state legislation that empowered the state authorities to collect cess upon the value of mineral produced to provide certain amenities to mining areas. The state's contention was that it had the power to impose a cess on minerals by virtue of entry 50 of list II of the Constitution which permits states to impose taxes on mineral rights, provided such taxes did not breach any limitations imposed on the state by the parliament. The supreme court did not accept the contention of the state and found the state-imposed cess to be invalid and held:

> "[…] that taxes on mineral rights are taxes on the right to extract minerals and not taxes on the minerals actually extracted. Thus, tax on mineral rights would be confined, for example, to taxes on leases of mineral rights and on premium or royalty for that, while taxes on the minerals actually extracted would be duties of excise. … (cess in) the present case is not a tax on mineral rights; it is a tax on the minerals actually produced and can be no different in pith and substance from a tax on goods produced which comes under Entry 84 of List I, as duty of excise. The present levy therefore cannot be justified as a tax on mineral rights."[44]

The issue concerning the imposition of state tax on mineral-bearing land once again came for judicial scrutiny in *H.R.S. Murthy* v. *Collector of Chittor (H.R.S. Murthy)*.[45] The court, in this case, upheld the state's right to impose a land cess by stating that it was in essence, a 'tax on land' which would come under entry 49 of the state list.

It is to be noted that the supreme court again took a contrary stance on this particular issue in *India Cement Ltd.* v. *State of Tamil Nadu*.[46] The court, in this case, overruled the decision in *H.R.S. Murthy* and declared the cess to be beyond the legal powers of the state legislature by highlighting the distinction

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39. The Cess Act, 1880, (Act 9 of 1880). Also *see* the West Bengal Primary Education Act, 1973 (Act 42 of 1973), s. 78 and the West Bengal Rural Employment and Production Act, 1976 (Act 14 of 1976), s. 4.
40. Debjoy Sengupta, "Centre wants West Bengal to cut cess on coal, hike royalty", *The Economic Times,* Aug. 23, 2016, *available at*: https://economictimes.indiatimes.com/news/economy/policy/centre-wants-west-bengal-to-cut-cess-on-coal-hike-royalty/articleshow/53818563.cms (last visited on Jan. 16, 2022).
41. The Cess Act 1880, the West Bengal Rural Employment and Production Act, 1976, the West Bengal Primary Education Act, 1973 and the Jharkhand Mineral Bearing Law (Covid-19 Pandemic) Act, 2020 empower state governments to determine the rate at which cess is payable to the government.
42. MP Ram Mohan and Shashikant Yadav, "Constitution, Supreme Court and the Regulation of Coal Sector in India", 11 *NUJS Law Review* 1 (2018).
43. AIR 1961 SC 459.
44. *Id.* at para 53.
45. *H.R.S. Murthy* v. *Collector of Chittoor & Ors*., AIR 1965 SC 177.
46. *India Cement Ltd.* v. *Union of India*, AIR 1990 SC 85.

between 'royalty' and 'land revenue'. Finding the approach taken by the court in *H.R.S. Murthy* was incorrect, the supreme court opined that as the cess in this context was not on land, but on royalty, it was beyond the competence of the state legislature to impose it. This was because the state's power to levy tax under this entry was subject to any limitations imposed by the parliament by a law relating to mineral development. It was held that by virtue of the MMDR Act, which the the parliament enacted under entry 54, list I, the state legislature was denuded of its power to levy any tax on minerals.

The supreme court's position on this issue was then tested in *Orissa Cement* v. *State of Orissa*[47] *(Orissa Cement*) wherein the court reiterated the findings of the *India Cement* case.[48] Here too the court opined that the imposition of a cess based on royalty was beyond the competence of the state legislature.

However, the supreme court deviated from its position in the *India Cement* case in *State of West Bengal* v. *Kesoram Industries and Ors*.[49] (*Kesoram Industries*). Upholding the constitutional validity of cess on royalty, the court, in this case, observed that "a legislation by the Union in the field covered by Entry 52 and 54 would not like magic touch or taboo denude the entire field forming the subject matter of the declarations to the State Legislatures and a denial to the State would extend only to the extent of the declaration made by the Parliament."[50] Furthermore, the court observed that "a state legislation, which makes provisions for levying a cess, whether by way of tax to augment the revenue resources or by way of fee to render services as quid pro quo but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of 'regulation and control' belonging to the Central Government."[51]

Thus, it was observed by the court that, even if such a cess is assumed to be a tax on mineral rights, it would still be covered by entry 50, list II. Though the same lies within the legislative competence of the state legislature, it is subject to any limitations imposed by the parliament by law in the area and context of mineral development. Thus, it was noted in *Kesoram Industries* that, as the centre did not cast any limitations on the state legislature's power to tax mineral rights, it would be squarely within the competence of the state to levy the impugned cess under entries 49 and 50 of list II.[52]

The matter came before the supreme court once again in *Mineral Area Development Authority* v. *Steel Authorial of India*.[53] After hearing both sides, the three- judge-bench of the court concluded that there was a conflict between the apex court's decisions in *Kesoram Industries*,[54] delivered by a five-judge-bench and those of *India Cement Case*,[55] which was delivered by a seven-judge-bench. The matter was thereafter referred to a nine-judge- bench and is still *sub judice*.[56]

The above narrative shows that the Indian judiciary has taken contrary positions while dealing with the issue concerning states' power to levy 'cess' on mineral resources and mineral-bearing land. While in some instances the supreme court has ruled against such a state-imposed cess by calling it

47. *Orissa Cement Ltd. and Ors*. v. *State of Orissa*, AIR 1991 SC 1676.
48. *Id*. at para 39.
49. *State of West Bengal* v. *Kesoram Industries and Ors*., (2004) 10 SCC 201.
50. *Ibid.*
51. *Id.* at para 129.
52. *Id.* at para 130.
53. *Mineral Area Development Authority* v. *SAIL*, (2011) 4 SCC 450.
54. *Supra* note 48.
55. *Supra* note 46.
56. *Supra* note 42 at 20.

unconstitutional, reinforcing the union's supremacy over the states, it has upheld the state's right to legislate on the matter in other cases. Recent judicial decisions show that the supreme court has now started to take note of the difference between 'cess', 'royalty' and 'tax', and, consequently, to acknowledge that the state, because it is the owner of mineral resources, has the power to levy a reasonable cess on such resources.[57] These decisions could be seen to indicate a gradual shift in the judicial mindset when it comes to decisions concerning mineral resources. This shift could be seen to favour the federalist model over the unitary model by vesting states with appropriate taxing powers.

Land Registration: A Controversial Bill in the Pipeline

Another important bill that got clearance from the state's cabinet in 2020, but was not tabled in the Assembly for further discussion, was the Jharkhand Land Mutation Bill, 2020. According to media reports, the bill was held back after facing criticism from within and outside the state government.[58] The state government stated that it would be tabled before the Assembly once all contentious points had been duly deliberated.[59]

The preamble of the proposed bill states that it seeks "to provide for regulating the process of mutation of land and making it concomitant with the needs of present time." Thus, there are provisions in the bill which provide for time-bound online mutation facility to the citizens. Furthermore, the officer concerned must provide reasons whether the action is not completed within the statutory time limit. Another provision of the bill provides legal sanctity to online documents. The supporters of the proposed bill claim that all of the aforementioned provisions would make the land registration process in the state more transparent. However, its critics believe that such legislation might become another tool for land-grab, especially for lands belonging to adivasis.[60] There have been numerous allegations that land records of adivasis in different districts of the state have been tampered with because a majority of the adivasi community do not have access to digital technology.[61]

Another contentious provision in the bill gives absolute impunity to any officer from civil, and criminal departments "for any act, thing or deed committed, or any word spoken by him when, or in the course of acting or performing any act in discharge of his official duties or functions." Such provisions in the proposed Bill can potentially alter the safeguards provided to adivasis under the Chhota Nagpur Tenancy Act, 1908, the Santhal Pargana Tenancy Act, 1949, the Forest Rights Act, 2006 and the Panchayat (Extension to Scheduled Areas) Act, 1996. So, notable tribal activists and leaders have opposed the proposed bill alleging that it can further marginalise tribal communities by having an adverse socio-economic and cultural impact on them.[62]

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57. *Ibid.*
58. Dhritiman Ray, "Under pressure, Hemant govt holds back land mutation", *Times of India*, Sep. 19, 2020, *available at*: https://timesofindia.indiatimes.com/city/ranchi/under-pressure-hemant-govt-holds-back-land-mutation-bill/articleshow/78195317.cms (last visited on Jan. 26, 2022).
59. *Ibid.*
60. Mahtab Alam, "Why is the Jharkhand Land Mutation Bill Being Opposed", *The Wire*, Sep. 24, 2020, *available at*: https://thewire.in/rights/jharkhand-land-mutation-bill-protest-adivasi-rights-hemant-soren (last visited on Jan. 30, 2022).
61. Sandeep Chaudhary, "Without Addressing Legacy Issues, Can Digitising Land Records in India Be a Game Changer?", *The Wire*, May 18, 2021, *available at*: https://thewire.in/rights/land-digitisation-ulpin-land-records-legacy-digital-india (last visited on Jan. 30, 2022).
62. *Supra* note 60.

Resolution for a Separate 'Sarna Code' in Census 2021

In 2020, the Jharkhand legislative assembly passed a resolution to provide a separate 'Sarna Code' for tribals.[63] The resolution seeks to provide a special column for followers of the 'Sarna' religion in Census 2021. Currently, the census classifies people under six religions- Hindu, Muslim, Christian, Sikh, Jain and Buddhist. While filling in the columns, adivasi residents have to identify themselves as one of these or as 'others', but cannot specify their religion as a different one. It is to be noted that 'Sarna' followers are nature worshippers who do not consider themselves Hindus and have fought for a separate religious identity for decades.[64] Tribal leaders and activists have hailed the state government's resolution for a separate Sarna code by claiming that subsuming adivasi belief in the 'other' category erodes their distinct identity.[65]

Data from existing census records suggest that the tribal population in Jharkhand was reduced by 12 percent in the last eight decades. Records suggest that, compared to the state's total population, the adivasi population has decreased from 38.03 percent in 1931 to 26.02 percent in 2011.[66] The state government has claimed that such a decline in the population of tribals has a negative impact on the constitutional provisions and policies framed to benefit them.[67] It is to be noted that the Constitution of India envisages special provisions given to tribal communities under schedule V of the Constitution. Moreover, identifying which area would come under schedule V is dependent on the tribal population of that particular area. In 2019, there were demands to exclude those areas from the purview of schedule V areas where the tribal population had declined.[68] The state government passed the aforementioned resolution to address such concerns. Experts claim that recognition of adivasi 'Sarna code' would address this issue and acknowledge the unique religious identity of tribals.[69]

Lastly, it needs to be pointed out that the entry relating to census is included in entry 69 of the union list of schedule VII of the Constitution. Thus, as per the constitutional framework, the state could do no more than pass a resolution to usher in positive reform in this matter because it does not have the power to legislate on the specific subject matter. By passing the resolution however, the state has declared its political affiliations and lent its moral support to the cause of the adivasis.

Conclusion

The state's legislative activity in 2020 was restricted due to the ongoing pandemic and the prevailing lockdown conditions. This analysis of the legislative performance of the state shows that there was no

63. Mukesh Ranjan, "Jharkhand Assembly passes resolution on 'Sarna Code'", *The New Indian Express*, Nov. 11, 2020, *available at:* https://www.newindianexpress.com/nation/2020/nov/11/jharkhand-assembly-passes-resolution-on-sarna-code-2222467.html (last visited on Feb. 02, 2022).
64. "Sarna code: More than just a political tactic", *Sabrangindia*, Oct. 30, 2020, *available at*: https://sabrangindia.in/article/sarna-code-more-just-political-tactic (last visited on Feb. 02, 2022).
65. Nandini Tank, "Act of Faith: The growing demand for recognition of the Sarna religion in Jharkhand", *The Caravan*, April 1, 2021, *available at*: https://caravanmagazine.in/religion/growing-demand-recognition-sarna-religion-jharkhand (last visited on Feb. 18, 2022).
66. Ishan Kukreti, "Jharkhand Assembly passes resolution for separate identity code for tribals", *Down To Earth*, Nov. 11, 2020, *available at*: https://www.downtoearth.org.in/news/governance/jharkhand-assembly-passes-resolution-for-separate-identity-code-for-tribals-74189 (last visited on Feb. 2, 2022).
67. *Ibid.*
68. *Supra* note 66.
69. *Supra* note 65.

detailed scrutiny of any bill passed in 2020. The state legislature showed reluctance to constitute any subject-specific select committees even when demands were raised for the same. All bills were passed on the same day they were introduced.

An examination into the nature of legislations enacted in 2020 shows that the majority of these legislations were brought about to augment the state's revenue receipts, which was facing a resource crunch due to the enormous COVID-19 expenditures being incurred by it. The controversy around the cess on minerals, which the states ostensibly own, but can in no way profit from, foregrounds one of the critical problems of Indian federalism in which states rich in natural resources are developmentally poor as their interests have not been adequately prioritized, when distribution of resources is undertaken.

There are some critical bills concerning land registration and religion in the pipelines of the state legislature. If passed, these could have a significant impact on the tribal population of the state.

KARNATAKA

Neela Badami[1]

Introduction

The year 2020 was a busy year in Karnataka, pandemic notwithstanding. Almost 60 pieces of legislation, 25 ordinances, 24 rules, 87 COVID-19 related orders, 257 COVID-19 related circulars, and 40 miscellaneous orders and notifications were produced. The legislations were mostly made under the state list, with a handful under the concurrent list. It has been observed that some entries under each list are more heavily used than others. Twenty one entries of the available 66 from the state list were used. Eight out of 47 of the concurrent list entries were used. Local government, land, and the state public services seem to have been a key preoccupation of the lawmaker under the state list, and education, under the concurrent list. Article 205 of the Indian Constitution was also used a few times.

Of the 25 ordinances promulgated, almost all were converted into legislations with little, if any, changes and are covered in the 60 legislations mentioned above. The only exception is the Industrial Disputes and Certain Other Laws (Karnataka Amendment) Ordinance, 2020 (ID Ordinance) which was enacted to amend the Industrial Disputes Act, 1947, the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970, to provide measures to boost ease of doing business in Karnataka. The ID Ordinance became a centre of controversy as it negatively affected workers and was defeated by a united opposition in the Council when the bill was tabled.

This review has been organised under the themes of local governance, land, health and environment (including state's response to the pandemic), and labour and industrial laws.

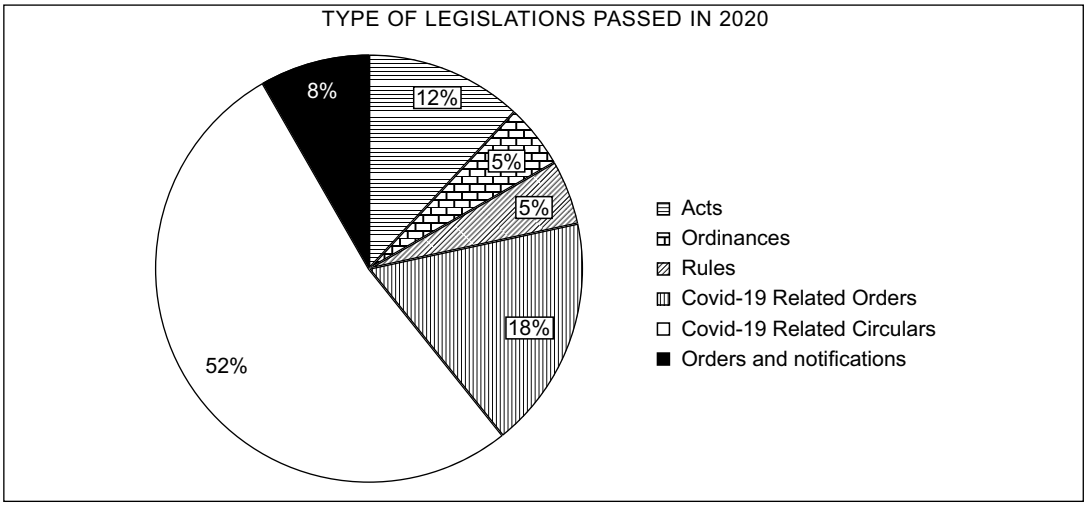
Quantitative Analysis

Set out below, are a few graphs depicting, *inter alia*, the manner in which legislations were passed and under what entries of the state/concurrent list these were passed.

Types of Legislations Passed in 2020

The pie-chart below represents the various types of legislations passed by the government of Karnataka in 2020. Orders and circulars arising out of the need to combat COVID-19 have been highlighted separately.

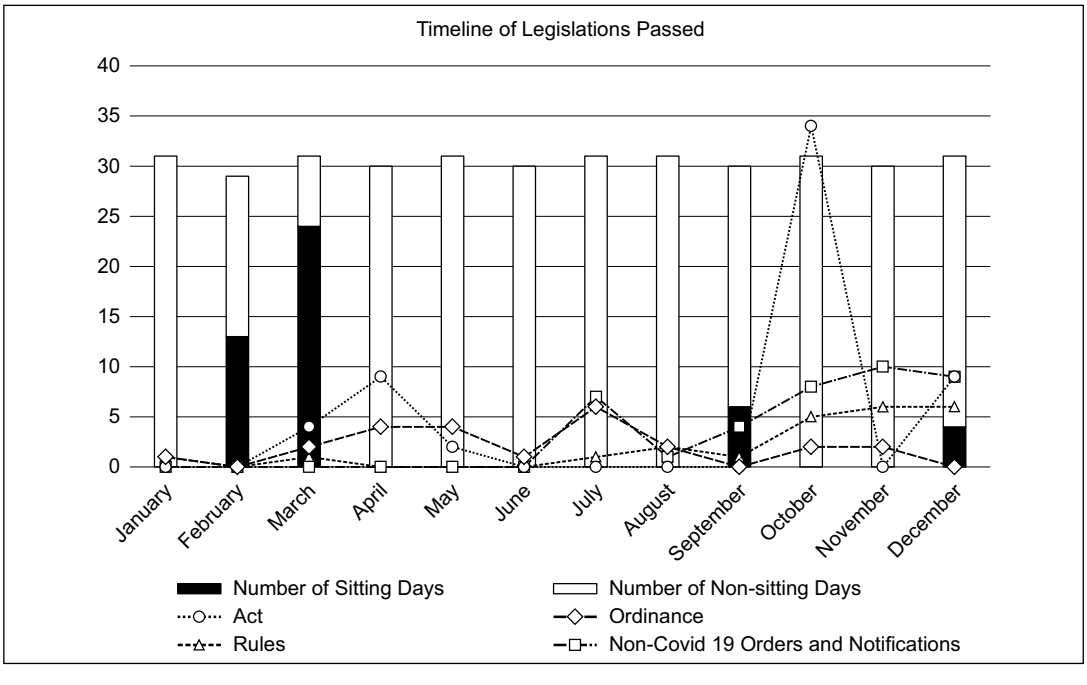
1. Partner, Samvad Partners, Bengaluru.
The author thanks Rhea Singh, Samanth Dushyanth and Mahimna Kandpal for their research assistance.



Note: The 12 percent slice showing Acts also includes ordinances that were converted into Acts.

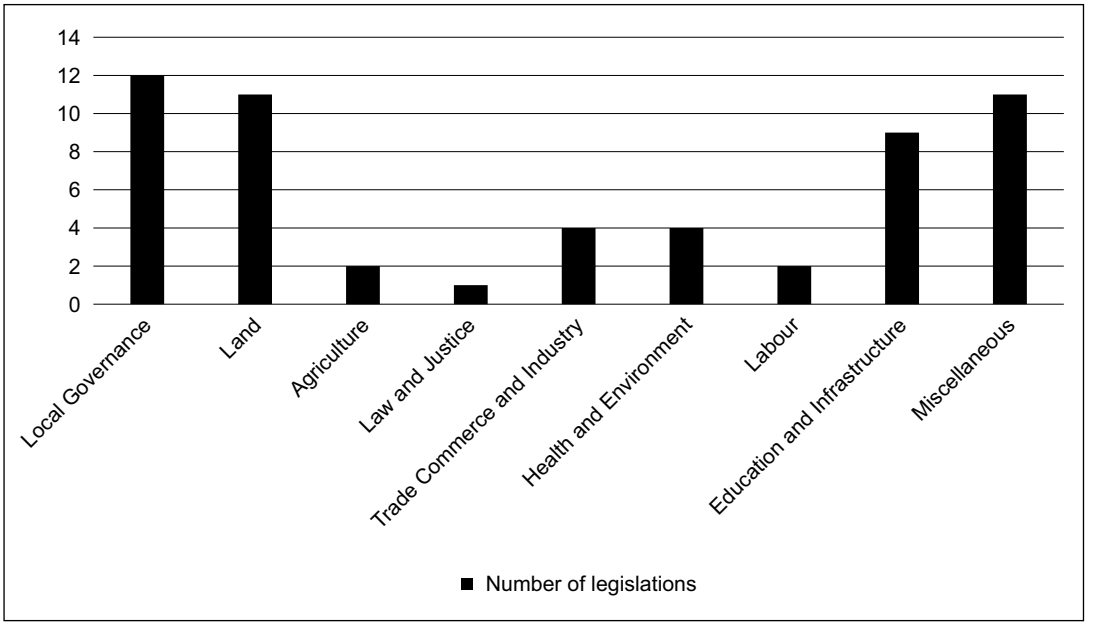
Timeline of Legislations Passed

The bar graph below represents the number of days the legislative assembly of Karnataka held a parliamentary session in 2020 contrasted against the number of various types of legislations passed by the sitting parliament. Evidently, the number of sitting days is small and yet 60 legislations were passed. The numbers indicate more mechanical functioning than deliberative law making. It is important to note that the conversion of most of the ordinances into legislation has been done without much change to the text of the underlying ordinance.



Legislation by Subjects

The bar graph below represents the various sectors in which the government of Karnataka passed legislations to amend existing laws or brought into effect new laws. Local governance, land, and education have been the key themes, followed closely by commerce and health. Agriculture, labour, law and justice are not far behind.



Qualitative Analysis

Local Governance

BBMP Act, 2020

Of the 12 legislations made under this theme, the BBMP Act, 2020**,** made under entry 5 of list II[2] has been one of the more controversial ones. The Bruhat Bengaluru Mahanagara Palike was established and governed under the Karnataka Municipal Corporations Act, 1976. The statement of objects and reasons (Objects) of the BBMP Act finds the principal Act to be inadequate in administrative and structural matters to govern Bengaluru (a major economic centre, large and growing population, with 714 sq. km under the BBMP limits). The principal Act is also a common legislation catering to nine smaller corporations in Karnataka. The Objects seek an independent legislation for the BBMP's working, for the stated purposes of "improving decentralization, integration of public participation at various levels of municipal governance and ensuring efficient decision making by the municipal authorities."

2. "Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities, and other local authorities for the purpose of local self government or village administration." This entry was used around 10 times in the year.

The BBMP Act, 2020 establishes a four-tier system of local governance:

a) The BBMP Corporation: The apex municipal authority responsible for functions including preparation and implementation of schemes for social justice and urban development in the city.

b) The Zonal Committees: The state, in consultation with the BBMP Corporation, will divide the municipal area into zones (maximum of 15), which will be administered through zonal committees. Functions of the zonal committees will include: (i) supervision and implementation of projects and schemes, and (ii) approving fresh infrastructure projects.

c) The Ward Committees: Each area would be divided into 225 wards with each ward being responsible for preparing specific ward related developmental schemes and also implementing schemes proposed by the BBMP Corporation.

d) The Area Sabha: Each of the wards would further be divided into area sabhas, whose representative would be appointed by the zonal committee.

A few key provisions of the BBMP Act have been challenged by citizen groups and activists by way of a PIL filed in the Karnataka high court.[3] Some background is useful here. Part IX-A (*Municipalities*) of the Constitution of India was inserted by the 74th Amendment Act, 1992. The main objective of this amendment sprung from a recognition that "[i]n many states, local bodies have become weak for a variety of reasons […]Urban Local Bodies are not able to perform effectively as vibrant democratic units of self – government." The new constitutional chapter on municipalities focuses on the need to put ULBs on "a firmer footing [in their] relationship with the State Government."

The PIL argues that the BBMP Act while proclaiming to improve decentralisation, actually continues to hoard power in the state government in a variety of ways, including in the constitution of zonal and constituency consultative committees which are vested with control over ward committees (whereas article 243-S envisages independent control to the latter). The head of the zonal committee is to be a zonal commissioner who is drawn from the bureaucracy and not from elected representatives of the people. The PIL argues that vesting additional committees that the Constitution doesn't envisage, with powers of control over ward committees violates article 243-S of the Constitution.[4]

This legislation and the reactions it provoked is interesting for the purposes of this study, since it is an example of the state using its law-making power to ostensibly decentralise power from the state to the city, but the legislative design shows the proverbial gap between intention and execution.[5]

It must be noted, however, that the Act does make efforts to include the voices of people through public participation. Apart from the categories of persons enumerated in the Constitution who can be nominated to municipalities,[6] the Act also adds social workers to the list but they cannot vote, as mandated by the Constitution. The PIL challenges the addition and, asks how the list could go beyond the bounds of the Constitution. The government in response has contended that the list was not exhaustive and the category added could be included as it was *ejusdem generis* with the categories provided in the list. The final fate of the provision would depend on the decision of the high court.

3. *CN Deepak and Others* v. *State of Karnataka and Others,* WP No 6126/2021.
4. The State has filed its objections and the matter is listed for final arguments on March 8, 2022.
5. *See* also Ramnath Jha, "The BBMP Act, 2020: A Critical Appreciation", *Observer Research Foundation,* Jan. 30, 2021, *available at*: https://www.orfonline.org/expert-speak/the-bruhat-bengaluru-mahanagara-palike-act-2020-a-critical-appreciation/ (last visited on March 24, 2022).
6. *See*, the Constitution of India, art. 243-R.

The Act read with the Karnataka Municipalities (Amendment) Act, 2020 that amends the Karnataka Municipalities Act, 1964 to form neighbourhood groups, area *sabhas* and ward committees among others thereby constructs/redesigns an institutional structure to enable participation of the people of the ward in local self-government.

The Karnataka Gram Swaraj and Panchayat Raj (Amendment) Act, 2020

It was not just Bengaluru that was focussed upon by the legislature to advance local self-government. Rural local bodies also received their fair share of amendatory attention. The Karnataka Gram Swaraj and Panchayat Raj (Amendment) Act, 2020 amended the Karnataka Grama Swaraj and Panchayat Raj Act, 1993 to provide for major changes in the functioning of rural local bodies. The terms of office of the president and the vice-president of the gram panchayat, taluk panchayat and zilla panchayat were halved; and reduced from five years to 30 months. Correspondingly, the standstill period in which motions of no-confidence could not be moved (which was earlier 30 months from the date of election) has now been reduced to 15 months. Certain election reforms were also introduced. Liquor shops are required to remain closed during the 48-hour period before close of polling. It is somewhat ironic that what is sauce for the goose isn't sauce for the gander when it comes to liquor. While the ban seems well intentioned, the reality on the ground indicates that liquor sales spike when panchayat elections are announced, with another government department, that of excise, raking in the moolah.[7]

Heritage Protection

Two legislations which are of interest simply because of the subject matter and the entries under which they were made, are the Lakkundi Heritage Area Development Authority Act, 2020 (entry 5[8] and 32[9] of list II) and the Sarvajna Kshetra Development Authority Act, 2020 (entries 5 and 32 of list II and entries 20[10] and 40[11] of list III). These legislations merit closer attention to understand which historic sites get state protection and which don't, especially when it is commonplace to see heritage buildings being razed to the ground in the interests of 'development'.

Lakkundi, a village in Gadag district, was an erstwhile royal Chalukya capital and is, therefore, full of picturesque ruins,[12] "no less than Hampi."[13] It is also the birthplace of Kannada literature patron and Jainism promoter, Attimabbe.[14] The Sarvajna Kshetra on the other hand includes the birthplace

7. *See* for example, V Shiva Shankar, "Karnataka: Gram Panchayat elections trigger spike in liquor sales", *Times of India,* Dec. 22, 2020, *available at*: https://timesofindia.indiatimes.com/city/bengaluru/karnataka-gram-panchayat-elections-trigger-spike-in-liquor-sales/articleshow/79850295.cms (last visited on March 24, 2022).
8. *Supra* note 2.
9. "Incorporation, regulation and winding up of corporations, other than those specified in list I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies."
10. "Economic and social planning."
11. "Archaeological sites and remains other than those declared by or under law made by parliament to be of national importance."
12. Padma Rao, "Luminous Lakkundi", *Deccan Herald,* Dec. 21, 2019, *available at*: https://www.deccanherald.com/spectrum/spectrum-top-stories/luminous-lakkundi-787295.html (last visited on March 24, 2022).
13. Special Correspondent, "Government may set up Lakkundi development authority", *The Hindu* (February 12, 2017) *available at*: https://www.thehindu.com/news/national/karnataka/Govt.-may-set-up-Lakkundi-development-authority/article17290068.ece (last visited on March 24, 2022).
14. DHNS, "Lakkundi Development Authority to be set up at a cost of Rs. 3 crore", *Deccan Herald,* March 16, 2017, *available at*: https://www.deccanherald.com/content/601607/lakkundi-development-authority-set-up.html (last visited on March 24, 2022).

of Sarvajna in Haveri district as well as a few other places situated in and around Hirekerur, Abalur and Masur of Hirekerur taluk in Haveri district. Sarvajna was a famous Kannada social reformer, philosopher and poet and is said to be from the ('backward') Kumbara community. The move of establishing a dedicated high-level authority (with the chief minister as chairman) for the development of the Sarvajna Kshetra can be seen as noted by some, as an attempt by the party in power, the BJP, to woo the OBC community which make up almost 20 percent of Karnataka's population.[15] The enactment of this legislation has led to other groups demanding that similar authorities be put in place for other noted personalities as well.[16]

Land

Land Grabbing

The Karnataka Land Grabbing Prohibition Act came into force in 2014 to protect land belonging to the government, Wakf Board, Hindu religious institutions and charitable endowments, local authorities, or other government statutory or non-statutory bodies (referred to as the protected land in this essay). In response to the rampant land grabbing in the state,[17] the government enacted the Karnataka Land Grabbing Prohibition (Amendment) Act, 2020.[18]

The amendment inserted a proviso in the definition of 'land' in the parent Act, to exclude certain types of land from the ambit of protected land under the statute. There are two primary exclusions made. The first relates to lands in respect of which applications for grant are pending as on the date of the amendment under sections 94A, 94B, 94C and 94CC of the Karnataka Land Revenue Act, 1964, which primarily deal with applications for regularisation of certain cases of unauthorised occupation of land, including where dwelling houses have been constructed. These regularisation exceptions are patently intended to cover smaller pieces of land and small homes and try to strike a balance between the necessity to adhere to town and country planning laws, zoning laws and the factual reality of the general messiness of human occupation and utilisation of land. The second exception is land covered under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, a central legislation that seeks to protect the rights of traditional forest dwellers.

The bulk of the amendment deals with which court has jurisdiction over land grabbing offences. It has been clarified that it is the special courts set up under the parent Act. The amendment also introduced the ability of the special courts to try offences in a summary manner. Civil appeals now lie to the high court if there is a substantial question of law. Appeals against orders determining criminal liability now also lie to the high court.

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15. D.P Satish, "Caste Census Stumps Siddaramaiah Govt.", *News18,* March 15, 2018, *available at*: https://www.news18.com/news/politics/dalits-muslims-outnumber-lingayats-and-vokkaligas-in-karnataka-caste-census-stumps-siddaramaiah-govt-1689531.html (last visited on March 24, 2022).
16. Sangamesh Menasinakai, "Low-key anniversary fete miffs Sharif enthusiasts", *Times of India,* July 6, 2020, *available at*: https://timesofindia.indiatimes.com/city/hubballi/low-key-anniversary-fete-miffs-sharif-enthusiasts/articleshow/76802934.cms (last visited on March 24, 2022).
17. Oftentimes through criminally creative methods. *See*, for example, Johnson TA, "Karnataka HC intervention unearths Bengaluru land grab racket using fake suits", *The Indian Express,* Aug. 31, 2021, *available at*: https://indianexpress.com/article/cities/bangalore/karnataka-high-court-intervention-unearths-bengaluru-land-grab-racket-using-fake-suits-7477532/ (last visited on March 24, 2022).
18. Under entries 18 and 64 of list II (18 - Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization) and (64 - Offences against laws with respect to any of the matters in this list).

It should be noted that the lack of appeal procedure was one of the grounds under which a PIL had been filed challenging the constitutional validity of the parent Act itself. The amendment was passed during the pendency of the PIL[19].

Bangalore Development Authority (Amendment) Act, 2020

While on the topic of land grabbing, the Bangalore Development Authority (Amendment) Act, 2020 must be touched upon. This legislation sought to amend the underlying Act, to allot BDA sites to the original owner or purchaser thereof *or unauthorized occupant who is in settled possession for 12 years before the commencement of the Amendment Act*, where *inter alia* the BDA could not make sites or include such sites in its schemes of layout formations. This amendment has generated quite a bit of controversy and PILs have been filed against it as well. According to one of the PILs, the amendment is detrimental to Bangalore residents, as it incentivises land-grabbers to illegally occupy government land, safe in the knowledge that such illegal occupation would eventually be legalised and regularised. The Karnataka high court has passed orders that any action on regularisation of illegal constructions on BDA land, would be subject to final orders on the PILs challenging the legality of the amendments.[20]

Land Reforms

The Karnataka Land Reforms (Second Amendment) Act, 2020

Despite strong opposition and criticism from the relevant stakeholders, the government of Karnataka amended the *Land Reforms Act, 1961* to introduce reforms related to the holding, transfer, and sale of agricultural land. Earlier, agricultural land could only be owned by agriculturists (*persons who personally cultivate such land*). Further, the sale of such land was prohibited to certain other categories of people, including: (i) non-agricultural labourers, (ii) agriculturists with land holdings higher than prescribed ceiling limits, and (iii) persons having an assured annual income of Rs 25 lakh or more from non-agricultural sources. *The Karnataka Land Reforms (Second Amendment) Act, 2020* now allows for non-agriculturists to buy agricultural land, and also removes the income limit for the purchase of land. However, the restriction on ceiling limits on land holdings continues to remain in place.[21]

The Karnataka Land Revenue (Second Amendment) Act, 2020

The Karnataka Land Revenue (Second Amendment) Act, 2020 amended the Karnataka Land Revenue Act, 1964 to provide for a definition of '*land-locked kharab land*,' and to allow the disposal of such land in the city and outskirts,[22] to the owner of the surrounding land at prescribed rates not less than the market value guidelines.

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19. In January 2021, the Karnataka high court upheld the validity of the parent Act, with some directions. The high court directed the state to set up special courts, preferably in every district, as at the moment, only one special court exists in Bengaluru for the entire state. It also held that the special court must mainly adopt the procedure for trial of warrant cases as prescribed in the code of criminal procedure, and would have to record in writing the reasons in case of adopting the procedure prescribed to conduct trials in a summary manner. It also struck down as unconstitutional the following provision in section 9(4) of the parent Act: "*additional evidence, if any adduced in the civil proceedings shall not be considered by the special court while determining the criminal liability.*"
20. Special Correspondent, "HC rider on new BDA law", *The Hindu,* May 26, 2021, *available at*: https://www.thehindu.com/news/cities/bangalore/hc-rider-on-new-bda-law/article34643820.ece (last visited on March 24, 2022).
21. Juhi Mehta and Sindhu Sharma, "Amendments to Karnataka Land Reforms Act", *AXFAIT,* Nov. 26, 2020, *available at*: https://www.axfait.com/post/amendments-to-karnataka-land-reforms-act (last visited on March 24, 2022)
22. up to 18 kilometres from the BBMP limits, up to 10 kilometres from the limits of other city corporations and up to five kilometres from the limits of other cities

The amendment also allows for the disposal of 'grant of government lands' (sic) leased for more than fifteen years to societies, charitable or religious institutions, or educational institutions 'or agriculture or for other purposes' (sic) at prescribed rates not less than the prevailing market value guidelines as a one-time measure if it is for the same purpose; and at double the rate of prevailing market value guidelines if it is for any other purpose.

Land locked kharab land refers to non-arable government land that is located in the midst of other land parcels, without access to the public by road or foot or otherwise, and as such cannot be used for any public purpose. This amendment allows the government to realise value from the sale of such land as well as from the specific type of leased lands, mentioned above.

Health and Environment

The state government in conformity with the decision of the supreme court of India[23] in a PIL challenging the validity of several laws that discriminate against the leprosy – afflicted, passed the Karnataka Prohibition of Beggary (Amendment) Act, 2020[24] to amend the Karnataka Prohibition of Beggary Act, 1975. The main change made is in section 14. Prior to the amendment, the section was titled '*Medical examination and detention of leprosy patients and lunatics*,' and allowed the government to have detained beggars removed to *inter alia*, '*mental hospitals*' or '*leper asylums*,' through reasoned orders for such removal. The new section does away with these loaded terms, and talks instead of "Medical examination and detention of beggars under certain circumstances," 'mental illness', 'contagious disease,' and "mental health establishment or a government or private hospital or medical institution."

Similarly, the Kannada University and Certain Other Laws (Amendment) Act, 2020 was passed in pursuance of the SC's judgment in W.P.(Civil) No:1151/2017, to amend the Kannada University Act, 1991, the Karnataka Rajya Dr. Gangubai Hangal Sangeetha matthu Pradarshaka Kalegala Vishwavidyalaya Act, 2009 and the Karnataka Samskrita Vishwavidyalaya Act, 2009 to remove the provisions relating to the discrimination against the persons suffering from leprosy in the above said legislations. The Kannada University Act in section 7 disqualifies certain persons from election or nomination to university authorities. Prior to amendment, persons suffering from leprosy were so disqualified. While the amendment is laudable, what is worth noting is that the deaf and mute are still so disqualified. A similar position is seen in the Performing Arts University and the Sanskrit University legislations. Will it take another PIL to have these removed, too?

State Government's Response to the COVID-19 Pandemic

From contagious diseases to the ongoing coronavirus pandemic is a small step. In response to the pandemic, the government of Karnataka enacted various legislations to achieve different objectives, primarily affecting different classes of people, and driven by different urgent considerations.

Reducing in-person interactions and increasing the use of technology to facilitate payments electronically has been one of the key features of the pandemic response almost globally. The Karnataka Court Fees and Suits Valuation (Amendment) Act, 2020 now has allowed for electronic modes of transfer for payment or refund of court fees, thus reducing the need for people to make such payments

23. *Pankaj Sinha* v. *Union of India*, Writ Petition (Civil) No. 767/2014, dated July 5, 2018 read with *Vidhi Centre for Legal Policy* v. *Union of India*, Writ Petition Civil No. 1151/2017(PIL-W) dated, April 24, 2018.
24. Under entries 15 and 16 of the concurrent list, dealing with respectively, vagrancy, nomadic and migratory tribes; and lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

in person. While this benefits those with access to the technology and bank accounts necessary to allow for such cashless transactions, what is glaring is the absence of measures taken for the benefit of those with no such access, persons who are dependent on day-to-day cash earnings for their livelihood, including daily wage labourers, and migrant labour.

A whole set of other measures have financial or taxation related underpinnings. The Karnataka Legislature Salaries, Pensions and Allowances and certain other Laws (Amendment) Act, 2020 provides for the reduction in salaries and allowances of the chief minister, ministers, minister of state, deputy minister, chairman, deputy chairman, speaker, deputy speaker, leader of opposition, government chief whip, opposition chief whip, members of the legislative assembly and the legislative council. This measure was taken to ensure that the money saved by doing so could be used as part of the COVID relief fund.

The government also amended the Karnataka Goods and Services Tax Act, 2017 to: (a) extend the period provided to file an application for revocation of cancellation of registration; (b) increase the time limit provided for removal of difficulties for the availing input tax credit without invoice or bill from three years to five years; and (c) to make the offence of fraudulent availment of input tax credit without invoice or bill cognizable and non-bailable and to make any person who retains the benefit of certain transactions and at whose instance such transactions are conducted liable for punishment. These extensions and certain relaxations were given due to the ravaging effect corona virus had on economic activities. Further, some of these changes were necessary to overcome difficulties seeded by the new tax regime.

One worrisome trend that Karnataka has seen over the last few years is violence in hospitals. There have been several instances where aggrieved families of patients who have succumbed to illness or disease, find a vent for their emotions in assaulting the attending medical personnel or staff, or in vandalising the premises. The pandemic has unfortunately aggravated this.[25] In order to combat the increasing violence against healthcare workers, the government of Karnataka enacted the Karnataka Epidemic Diseases Act 2020 (Epidemic Diseases Act) to protect healthcare workers and officials engaged in COVID-19 related duties. The Epidemic Diseases Act provides for stringent punishment to persons who come in the way of the healthcare officials' duties or those who vandalise public or private property. It provides for imprisonment from six months to three years and a fine of up to INR 50,000 for those who contravene the provisions of this law. The government has the right to recover twice the value of the property from persons who are found to have been involved in damaging public or private property. The Epidemic Diseases Act also allows the government to prohibit acts that may increase transmission, inspect passengers suspected of infection, seal state or district borders, restrict the operation of public and private transport; prescribe social distancing norms; restrict congregations in public places; regulate functioning of offices and a host of other measures necessary to control epidemics.

State Public Services, State Public Service Commission

The Karnataka Lokayukta (Second Amendment) Act, 2020[26] amended the Karnataka Lokayukta Act, 1984 to fix time frames within which preliminary inquiry and investigation are to be conducted by the

25. Express News Service, "Violence against doctors: IMA writes to PM, CM", *The New Indian Express,* July 24, 2020, *available at*: https://www.newindianexpress.com/states/karnataka/2020/jul/24/violence-against-doctors-ima-writes-to-pm-cm-2173989.html (last visited on March 24, 2022).
26. under entry 41 of list II, state public services; State Public Service Commission.

Lokayukta or Upalokayukta; and reports are to be submitted to the competent authority by Lokayukta or Upalokayukta. The motivation behind the amendment is speedy disposal of pending grievances or complaints. As per the amendment, preliminary inquiries must be conducted within 90 days of receiving a complaint, and minor investigations must be completed within six months. If officials exceed this time limit, a written explanation, seeking more time must be provided.[27]

Ease of Doing Business v. Labour Rights

'Welfare of labour' is the twenty-fourth entry in the concurrent list, and as such within the jurisdiction of both the centre and the states. The National Commission on Labour constituted by the government of India in 1999,[28] recommended that the existing labour laws could be grouped into well recognized functional groups. While the ultimate object must be to incorporate all such provisions in a comprehensive code, such a codification may have to be done in stages. It is therefore well-recognised at a policy level that minimum levels of protection to workers are a must. The competing objective is also for India to better its rankings in the 'Ease of Doing Business' directory compiled by the World Bank.[29] This dialectic is a very uneasy one and as may be expected, those without institutional power do seem to get the short end of the stick.

After years, the government of India set out to consolidate the legislations into thematic codes over 2019-2020: (a) Code on Wages, 2019 (b) Occupational Safety, Health and Working Conditions Code, 2020 (OHSC Code); (c) Industrial Relations Code, 2020 (IR Code); and (d) Code on Social Security, 2020 (SS Code). The Code on Wages was passed in 2019 while the bills for the OHSC Code, IR Code and SS Code were initially tabled in 2019 and in 2020, those bills were withdrawn and replaced by fresh bills which were finally passed and received presidential assent. These four codes aim at overhauling and consolidating 29 existing labour laws in India based on functionality. The pandemic and the following national lockdown led to the highlighting of the lack of social security coverage for the informal sector which forms the backbone of most industries. This laid the impetus for the speedy introduction of three labour codes. These herculean efforts seem to have earned the distinction of making nobody very happy.[30]

This background has been mentioned to highlight what has been happening on the national stage, even as the state stage is analysed. Karnataka also undertook several measures in 2020 to facilitate ease of doing business for industries. The Karnataka Industries (Facilitation) (Amendment) Act, 2020 amended the existing law to ease the process of setting up of manufacturing industries or enterprises by establishing separate nodal agencies to facilitate investments and establishments of enterprises in the state. These agencies may issue certificates of in-principle approval to new enterprises, in lieu of individual approvals and departmental clearances.

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27. *See*, Shruthi Sastry, "Strengthen Lokayukta with adequate resources: MLCs", *Deccan Herald,* Sep. 24, 2020, *available at*: https://www.deccanherald.com/state/top-karnataka-stories/strengthen-lokayukta-with-adequate-resources-mlcs-892584.html (last visited on March 24, 2022).
28. With the following terms of reference: To suggest rationalization of existing laws relating to labour in the organized sector; and to suggest an "umbrella" legislation for ensuring a minimum level of protection to the workers in the un-organized sector.
29. *See* for example, Ease of Doing Business Ranking, *available at*: https://www.makeinindia.com/eodb# (last visited on March 24, 2022)
30. *See*, Poornima Hatti and Nivedita Udupa, "Overhaul of Indian Employment Laws: A step forward but a missed opportunity", *AXFAIT*, June 15, 2020, *available at*: https://www.axfait.com/post/overhaul-of-indian-employment-laws-a-step-forward-but-a-missed-opportunity (last visited on March 24, 2022).

Karnataka also amended the Karnataka Shops and Commercial Establishments Act, 1961 to conditionally allow all women employees to work night shifts. Previously, only women employees of information technology or IT-enabled services were permitted to work night shifts, subject to certain safety and security conditions such as free transport. The amended law extends these provisions to other establishments, and allows for night shifts with written consent from the women employees. The question of consent in an unequal power relationship is of course questionable. Given the limited applicability of the Karnataka Shops and Commercial Establishments Act, 1961 on account of the wide-ranging exemptions in section 3 (which excludes persons enjoying management positions), it is important to ask the question as to who this amendment seeks to target, and eventually, benefit. Employer-employee relationships are not the most equal in terms of negotiating power, specifically when it comes to workers outside the managerial level, and an enabling amendment which seeks to allow women to work night shifts may do more harm than good.

The ID ordinance, in one fell swoop, sought to amend the following central legislations. A double-edged sword, on the one hand, it serves to protect certain industries, on the other, it curtails fundamental rights of employees as well as trade unions.

a) Industrial Disputes Act, 1947: While the 1947 Act stated that industrial establishments employing up to 100 workers would have to seek government approval in matters relating to layoffs, retrenchment and closures, the ID ordinance now exempts industrial establishments that employ up to 300 workers from seeking approval in relation to the aforesaid matters. This gigantic leap from 100 to 300 workers would prove detrimental to the interest of workers employed in small scale industries.

b) Factories Act, 1948: Section 65(3)(iv) of the Factories Act was amended to increase the overtime limit from 75 to 125 hours.

c) Contract Labour (Regulation and Abolition) Act, 1970 (CLRA): The changes to the CLRA will exempt factories employing up to 50 (fifty) workmen from its provisions as opposed to 20 (twenty) workmen under the erstwhile regime.

A strong stance was taken by the legislature in response to the uproar created by the controversial ID Ordinance, 2020 which tweaked labour laws to the disadvantage of the workers. The bill introduced to replace the ordinance was defeated soundly in the legislative council by a united opposition. The government put the plan of repromulgating this controversial ordinance in cold storage fearing strong resistance from the labour unions.

The State as a Technology Hub

Bangalore in particular, and Karnataka in general, is perceived as India's Silicon Valley and is the start-up capital of the country, with a host of startups and venture capital / private equity funds headquartered in the state. The Karnataka government therefore does make the best efforts it can to nurture this ecosystem. The Karnataka Innovation Authority Act, 2020 aims to establish "Regulatory Sandboxes" wherein, innovators are allowed a small window of exemption from certain prescribed regulatory challenges for a specified period to carry out innovation and the state also gets to observe such innovations. The time period for such sandboxes is one year, but it may be suitably extended as per the terms of the legislation. It is worth noting that startups have been hesitant to avail themselves of this opportunity as they perceive that it would bring them directly into the gaze of the government and authorities which may not always be a benevolent one.

Karnataka has been trying to create an impetus for the use of electric vehicles in view of the environmental benefits of moving away from fossil fuels. In this regard, the Karnataka Stamp (Amendment) Act, 2020 was passed to amend the Karnataka Stamp Act, 1957 provide 100percent exemption from stamp duty with respect to certain purchases or leases of land used for EV related projects.

Conclusion

An examination of the nature of legislative activity of Karnataka assembly shows that the year was heavily influenced by the executive, primarily on account of the COVID pandemic which necessitated swift action on part of the government. Compared to previous years[31] when only a handful of ordinances were brought in, 2020 marked a stark difference with a total of 24 ordinances being promulgated.

Karnataka has a history of promoting local self- governance and encouraging people's participation. At the same time, in recent years more authoritarian trends of governance and law making are creeping in. The year under survey demonstrates the pulls and pressures of both modes of operation. The local governance legislations indicate that the inclination is towards devolution of power. However, from the speed at which legislations were passed and ordinances converted into statutes, it is evident that values of discussion, deliberation and debate have been given short shrift and it is mechanistic production which is in operation.

Karnataka was among the few states where legislators took a pay cut to enhance resources for the pandemic needs of the people; yet the ease with which breach of safety regulations were criminalised speaks of authoritarian tendencies.

The year was marked by attempts on part of Karnataka government to promote industries and job opportunities in the state as a measure to rejuvenate the economy which was battered by the COVID pandemic. However, in its attempt to woo the industrialists (employer), the ordinance brought in by the government disregarded the concerns of the labour unions. The ensuing uproar resulted in the bill being defeated in the council.

Whilst Bangalore has been known countrywide for its cosmopolitan culture, the use of the power to protect certain monuments and archaeological sites may point towards more parochial sentiments starting to gain ascendance.

It would be interesting to watch in the years to come, whether any of these tendencies will triumph or whether the democratic spirit of the state would continue to function in this fast and loose manner.

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31. In 2017, only one ordinance was promulgated. Department of Parliamentary Affairs and Legislation (DPAL), Chronological List of Karnataka Ordinances for 2017, *available at*: https://dpal.karnataka.gov.in/new-page/2017/kn (last visited on March 24, 2022).

    In 2018, no ordinance was promulgated. DPAL, Chronological List of Karnataka Ordinances for 2018, *available at*: https://dpal.karnataka.gov.in/new-page/2018/kn (last visited on March 24, 2022).

    In 2019, a total of three ordinances were promulgated. DPAL, Chronological List of Karnataka Ordinances for 2019, *available at*: https://dpal.karnataka.gov.in/new-page/2019/kn (last visited on March 24, 2022).

KERALA

Noor Ameena[1]

Introduction

State legislatures play an important role in law-making within the Indian constitutional framework. They enact laws related to the most crucial areas of a citizen's life, including agriculture, public health, education, labour and local government, spread across the state and concurrent lists in Schedule VII of the Constitution. Given the importance of state governments in the Indian federal system, it is crucial to evaluate their legislative performance. For this study, all bills, ordinances and resolutions issued in 2020, in Kerala, were examined.[2]

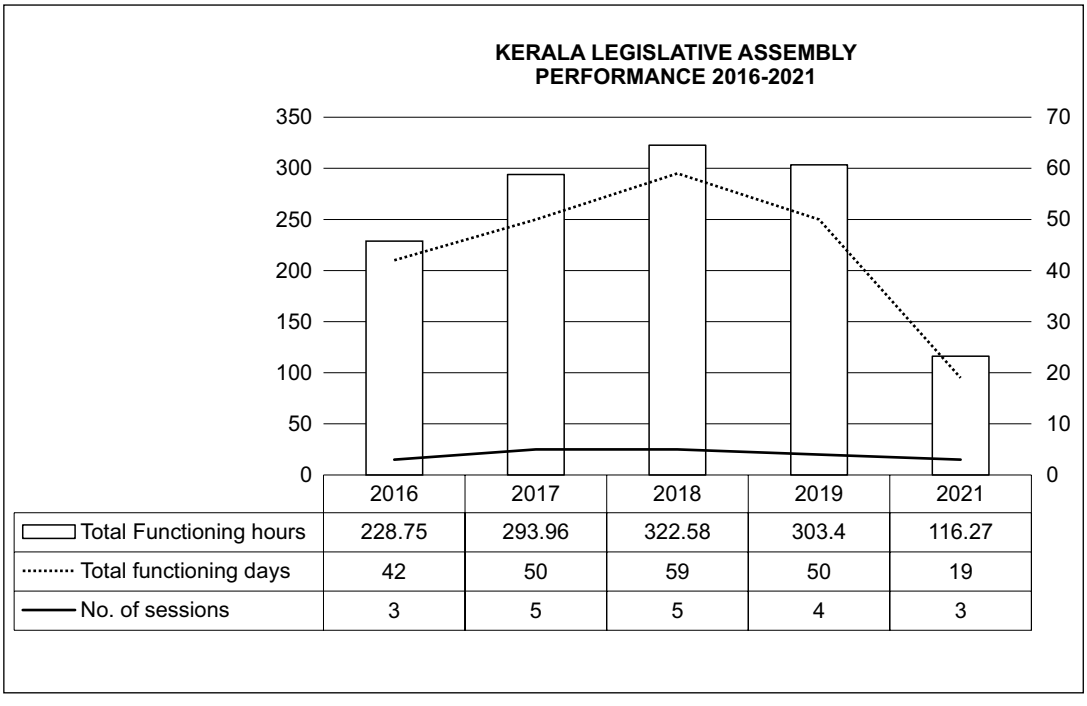
Performance of Kerala Legislative Assembly: An Overview

In 2020, the Kerala Assembly had the lowest number of functioning days and hours. This can be partly attributed to the pandemic, which redefined the very idea of 'normal' at several levels. Data from 2017 to 2019 reveal that the number of functioning days of the Assembly was between 50 and 60, while the same for 2020 was just 19 days[3]. The total number of hours clocked was also only one-third compared to the previous three years. The average number of functioning hours for the same period was 306.64 as against 116.27 hours in 2020.

Figure 1 shows that the number of hours spent on legislative activity in 2020 was less than half that of the previous years. Only eight bills were passed in 2020, of which five were finance and appropriation bills. Of the remaining three, a couple were Municipality and Panchayat Raj (Amendment) Bills (in the light of upcoming local body elections) and one was the Kerala Christian Cemeteries (Right to Burial of Corpse) Bill, 2020. These three bills were sent to the subject committee and were passed after the committee submitted its report with comments.

Kerala has a robust committee system. A total of 655 reports were presented by different committees during the period of the fourteenth legislative assembly. The state has 14 subject committees, which have been constituted on different subjects like education, health and family welfare, water resources, land, revenue, tourism, etc. These committees submit periodical reports, scrutiny reports, action taken reports, general and special reports. Ad-hoc committees have also been constituted to understand a particular situation on the ground. For example, in 2020, an ad-hoc committee was constituted to study

1. Doctoral Fellow, NALSAR University of Law.
2. The official data released by the Kerala legislative assembly is available at: http://niyamasabha.org/ (last visited on Dec. 16, 2021); http://www.niyamasabha.nic.in/ (last visited on Dec. 16, 2021).
3. PRS Legislative Research, "Functioning of Kerala 14th Assembly (2016-2021)", *available at:* https://prsindia.org/legislatures/states/functioning-of-kerala-14th-assembly-2016-2021 (last visited on Oct. 26, 2021).



	2016	2017	2018	2019	2021
Total Functioning hours	228.75	293.96	322.58	303.4	116.27
Total functioning days	42	50	59	50	19
No. of sessions	3	5	5	4	3

Figure 1: Performance of Kerala legislative assembly: 2016-2021.

the situation that evolved with the introduction of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act in Kerala.

The legislative assembly also issued a resolution against the controversial Farmers Acts[4] passed by the union government in the light of the ongoing protests of farmers across India.[5] It pointed out that agriculture is a matter that falls within entry 14 of the state list and the union government do not have the legislative competence to legislate on this area without consulting the states or inter-state council, and called for the repeal of these Acts.

An Executive-Driven Year

A further evaluation of the legislative time spent on bills shows that of the eight passed in 2020, all except one were passed before March 15, that is, before COVID-19 truly hit India. (The first COVID case was detected in India in the last week of January, in Kerala; this was followed by a country-wide lockdown in March as the number of cases increased manifold.) But 81 ordinances were promulgated in 2020. This clearly shows that 2020, particularly, was an executive-driven year. However, the nature

4. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020, the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act 2020, and the Essential Commodities (Amendment) Act, 2020.
5. In 2019, the resolution passed against the Citizenship Amendment Act and National Population Register by the Kerala assembly led to serious debates.

of legislative activity can only be understood if we study the issuance of ordinance versus bills over the past years.

Table 1: Details of Bills and Ordinances passed by Kerala Assembly (2011-2020)

Year	Bill	Ordinance	Ratio of Bills to Ordinance
2011*	18	60	0.3
2012	26	65	0.4
2013	25	56	0.446
2014	48	30	1.6
2015	23	18	1.27
2016*	5+10	6	2.5
2017	24	41	0.58
2018	38	59	0.64
2019	26	43	0.60
2020*	8	81	0.098 ^ 0.1

* Election year

The data of the past three years (see Table 1) shows that the number of ordinances passed in proportion to bills has always been high; but the bill to ordinance ratio, which averaged at 0.6 in 2019, reduced to 0.1 in 2020. In other words, for every one ordinance passed in 2020, only 0.1 bill was passed. Further, the legislative performance in terms of bills versus ordinances ratio of the thirteenth legislative assembly was better than that of the next.

A further evaluation of ordinances in 2020 reveals that, of the 81 ordinances passed in the year, the number of ordinances re-promulgated was relatively high. One ordinance was re-promulgated five times, six ordinances were re-promulgated four times, three ordinances were re-promulgated thrice, and thirteen ordinances were re-promulgated twice. Multiple re-promulgation of ordinances is often referred to as 'ordinance raj'. It has been subjected to the criticism of the supreme court time and again as an attempt to bypass democratic processes and been referred to as governance by whim. In this context, a closer examination of the ordinances that were re-promulgated three or more times is warranted.

The one ordinance that was re-promulgated five times was the Kerala Goods and Services Taxation (Amendment) Ordinance, 2020. Of the ordinances which were re-promulgated four times, two pertained to welfare funds, two to education, one to land and natural resources and another to recruitment to public service/law and religious institutions (appointment to Devaswom Board). No particular pattern could be observed when it came to the ordinances which were promulgated multiple times, and the limited number of sittings could be attributed to the ongoing pandemic.

Sectoral Classification of Ordinances

The ordinances issued in the year 2020 have been classified on the basis of sector—education, public health, labour, land and natural resources, police, taxation and local self government—for detailed evaluation.

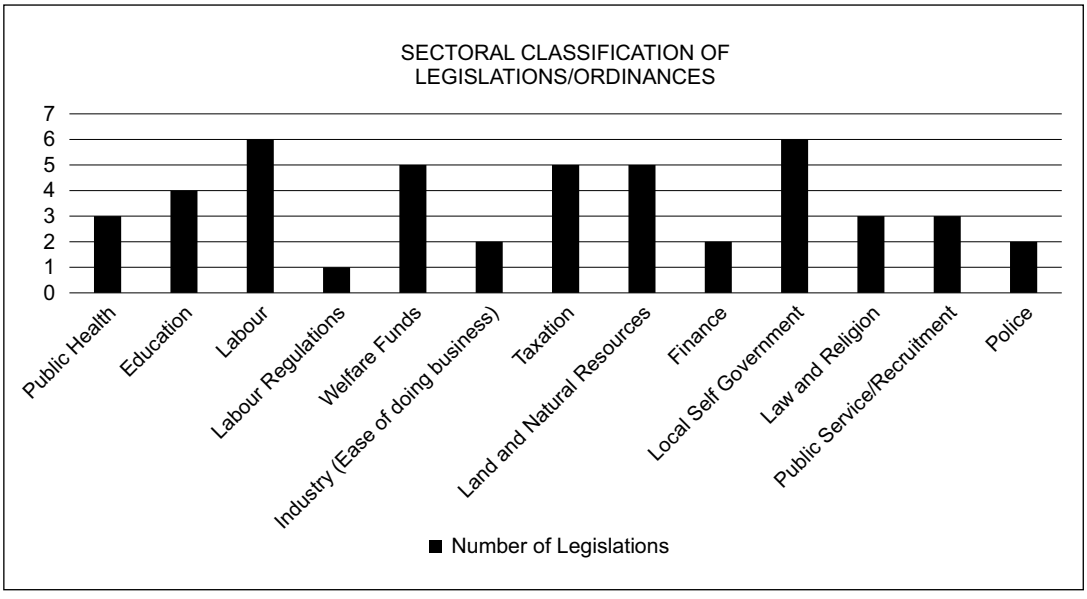


Figure 2: Sectoral classification of legislations passed in 2020.

Public Health

Kerala witnessed four outbreaks of deadly viruses, Nipah virus in 2018 and 2019—a deadly disease spread through air and supposedly transferred to man from bats (not confirmed till date)—and two waves of COVID-19 in 2020. In fact, the first COVID case in India[6] was reported from Kerala, with the government responding promptly through local shutdowns, contact tracing of patient and the issuance of strong safety protocols; this was even before the central government announced the lockdown. The state machinery was kicked into action by utilising the age-old Epidemic Diseases Act, 1897 (hereinafter referred to as Epidemics Act, 1897). The Act provides for the central and state governments to take measures to prevent the outbreak or spread of 'any dangerous epidemic disease' if they think that the existing laws are insufficient. The state government can issue temporary regulations to be followed by any person or class of persons to prevent the outbreak or spread of such disease, including inspection of persons travelling by the railways or other modes of transport, and segregation of those who are suspected to be infected in a hospital or any temporary accommodation. The central government can inspect ships or vessels or people arriving or leaving from such a port.

Later, the National Disaster Management Act (NDMA), 2005, though originally designed to manage natural disasters like floods and earthquakes served as a source of authority for state actions, when the union government declared COVID-19 as a 'notified disaster' under the Act.[7] However, it is evident that

6. M.A. Andrews, Binu Areekal, *et al.*, "First confirmed case of COVID-19 infection in India: A case report", 151 *Indian Journal of Medical Research* 490–492 (2020).
7. Jitesh Vachhatani, "Home Ministry declares Coronavirus as 'notified disaster' to provide assistance under SDRF" *Republic World*, March 14, 2020, *available at:* https://www.republicworld.com/india-news/politics/home-ministry-declares-coronavirus-as-notified-disaster-to-provide-s.html (last visited on Mar.13, 2022).

both these legislations had their limitations. In April 2020, the central government amended the Epidemic Diseases Act by introducing an ordinance to protect the safety of healthcare workers during the pandemic, when acts of violence against health care personnel were rampant. Other provisions included inspection of buses, trains, ships, vessels, goods vehicles and aircraft; and travel restrictions and detention of people intending to travel by any of these means of transport.[8] During the debates, the members of parliament emphasised the role of state governments in combating an epidemic and expressed strong resentment against the unprecedented lockdown which was imposed without any consultation with the states. It was also proposed that a consultative process needs to be initiated with all major stakeholders, including the state governments, for a complete overhaul of the Epidemic Diseases Act.[9]

The Kerala Epidemic Diseases Ordinance 2020 seeks to repeal the earlier legislations, including the Epidemic Diseases Act, 1987, Cochin Epidemic Diseases Act 1072, and Travancore Epidemic Diseases Act 1072, and brings in a new legislation to handle epidemics in Kerala.[10] It gives power to the states to notify any disease as an epidemic and, if the state government is satisfied that the whole or a part of the state is threatened with the outbreak of an epidemic, it can issue temporary regulations on matters like sealing state borders, restricting public and private transport, inspecting and quarantining persons entering the state via air, rail, road or sea, restricting congregation of persons in public or religious spaces, and prohibiting or restricting the functioning of shops and commercial establishments, factories, workshops and godowns.

Along with the Epidemic Diseases Ordinance, the Kerala Disaster and Public Health Emergency (Special Provisions) Ordinance, 2020 was introduced to enable the state to defer the payments due to any person, institution or an employee of the government to the extent not exceeding one-fourth of the amount due or payable, for such period for the management of the situation arising out of a disaster or public health emergency or otherwise. This was preceded by a government order (GO) which proposed the deferment of six days salary of government servants for three months. However, the GO was struck down by high court for lack of legal authority.[11] This ordinance, again, was a special measure brought in to ease the financial hardship caused by COVID-19 and prolonged lockdowns and the increased budget allocation for public health and pandemic management. During this period, the salaries and allowances of the ministers, speaker, deputy speaker, leader of the opposition, chief whip and the members of the Kerala legislative assembly were reduced by 30 percent to raise extra resources for combating the pandemic and to provide expeditious relief and assistance to the people of the state.[12]

8. The Epidemic Diseases (Amendment) Ordinance, 2020.
9. Rajya Sabha, Uncorrected Verbatim Debates (Session 252) Sept. 19, 2020, *available at*: https://rajyasabha.nic.in/business/newshow.aspx (last visited on Dec. 14, 2021).
10. After the outbreak of COVID-19, several states responded by amending or repealing the colonial legislation. For example, in the early days of COVID-19 itself, Odisha brought in amendments to raise the penalty of offences under the Epidemic Diseases Act. Karnataka also brought in Karnataka Epidemic Diseases Ordinance repealing the Epidemics Act 1897 in its application to state of Karnataka.
11. K.C. Gopakumar, "Covid 19: HC stays Kerala govt. order on employees' salary cut" *The Hindu,* April 28, 2020, *available at:* https://www.thehindu.com/news/national/kerala/covid-19-hc-stays-kerala-govt-order-for-employees-salary-cut/article31453524.ece (last visited on Dec. 15, 2021).
12. The Payment of Salaries and Allowances (Amendment) Ordinance, 2020.

Education

Four ordinances were issued on education in 2020. The Sri Narayana Guru Open University Ordinance, 2020 was issued for the establishment of a state open university on the lines of the Indira Gandhi National Open University (IGNOU), which would become the exclusive distance education provider of the state. The ordinance prohibited the state universities that had been offering distance education courses till then from offering such courses. Each university had to get prior approval of the courses released under each academic stream from the University Grants Commission (UGC). Due to the bar created by this ordinance, of the three major state universities – Kerala University, Mahatma Gandhi University and Calicut University – only Kerala University applied for UGC approval.[13] At this time, the proposed open university was still in the offing, and the academic councils and board of studies were yet to be formed; further the approvals from the UGC was pending.[14] This created a situation wherein the newly proposed university was not in a position to offer the courses, and the state universities that were competent to offer the courses were barred by the ordinance, resulting in the loss of an academic year for the students. It must be noted that over two lakh students depend on private registration and distance education for their higher education in Kerala.[15] The high court of Kerala stayed the operation of the controversial clause pending final judgment and the state universities resumed their course via distance mode of education.[16]

The Kerala University of Digital Sciences, Innovation and Technology Ordinance, 2020 was issued to upgrade the Indian Institute of Information Technology and Management to the status of a digital university, to encourage growth of digital research and entrepreneurship and to promote linkages between industry and technological education. The aim was to generate human resources in the field of emerging areas like artificial intelligence, data analytics, block chain, and cognitive science.[17]

Another ordinance was issued to change the nomenclature of the Department of Education to the Department of General Education.[18] University laws were also amended allowing for affiliation of new courses in colleges of four major universities.[19]

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13. Sovi Vidyadharan, "Government allows Kerala University to offer distance education courses this year" *The New Indian Express*, Oct. 27, 2020, *available at:* https://www.newindianexpress.com/states/kerala/2020/oct/27/government-allows-kerala-university-to-offer-distance-education-courses-this-year-2215393.html (last visited on Oct. 27, 2021).
14. Sovi Vidyadharan, "Kerala Open University mess a result of government's lack of farsightedness: Academics" *The New Indian Express*, Nov. 1, 2020, *available at:* https://www.newindianexpress.com/states/kerala/2020/nov/01/kerala-open-university-mess-a-result-of-governments-lack-of-farsightedness-academics-2217936.html (last visited on Oct. 27, 2021).
15. Fathimathu Zuhara K, R. K. Suresh Kumar and Shefeeque V., "Implementation Procedures for the Institution of Kerala Open University (Based on Ram Takwale Committee Report)" (Kerala State Higher Education Council, July 2018), *available at:* https://kshec.kerala.gov.in/images/pdf/combinepdf.pdf (last visited on Mar. 13, 2022).
16. Sarath Babu George, "Kerala universities to admit students to distance-education courses" *The Hindu*, Oct. 26, 2020, *available at:* https://www.thehindu.com/news/national/kerala/kerala-universities-to-admit-students-to-distance-education-courses/article32945234.ece (last visited on Dec. 13, 2021).
17. "Kerala to form digital university" *The New Indian Express*, Jan. 16, 2020, *available at:* https://www.newindianexpress.com/states/kerala/2020/jan/16/kerala-to-form-digital-university-2090078.html (last visited on Oct. 27, 2021).
18. Other changes in nomenclature include Director of Public Instruction to Director of General Education, Headmaster to Headmaster/ Headmistress or Vice Principal.
19. The University Laws (Amendment) Ordinance, 2020.

Labour

Conforming to International Conventions

The Kerala Headload Workers (Amendment) Ordinance, 2020 is a new development in the labour rights jurisprudence. It calls for limiting the maximum weight an adult man can carry as headload from 75 kg to 55 kg, and for women and adolescent workers (15-18 years) to 35 kg in conformity with the international labour standards. International Labour Organisation Maximum Weight Convention No. 127 mandates that no worker shall be engaged in manual transport of a load in a manner detrimental to the health and safety of the individual, and set the maximum permissible weight at 55 kg. The ordinance also provides for the terms and conditions of service, including 'retirement benefits' of the officers and employees of the Headload Workers Board.

Welfare Funds

Welfare funds are a social security mechanism widely used by the Kerala government. The concept of welfare funds, in general, is to create a fund with the contribution of employees, employers as well as the government. The government pools in select levies towards the fund. This is a robust initiative to provide some social security to the unorganised sector, which constitutes a major segment of the labour force. The year 2020 witnessed amendments in the welfare funds legislations for agricultural workers,[20] tailoring workers,[21] jewellery workers,[22] bamboo, kattuvalli and pandanus leaf workers, smack plantation workers,[23] factory and plantation workers and other establishments covered under the Kerala Labour Welfare Fund Act.[24] The broad objective of the ordinances is to raise the revenue of the welfare funds by altering the periodic contributions of employees, employers as well as the government.[25] The welfare boards introduce different schemes, including scholarships for higher education, health allowance, marriage allowance, accident claims, post-death allowance, and assistance for cremation among others.[26]

Ease of Doing Business

Kerala is ranked 28 among the states in Ease of Doing Business according to the Reserve Bank of India ratings for the year 2019.[27] The state's ranking was 18, 20 and 21 respectively for 2015, 2016 and 2017.[28]

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20. The Kerala Agricultural Workers' (Amendment) Ordinance, 2020.
21. The Kerala Tailoring Workers' Welfare Fund (Amendment) Ordinance, 2020.
22. The Kerala Jewellery Workers' Welfare Fund (Amendment) Ordinance, 2020.
23. The Kerala Bamboo, Kattuvalli and Pandanus Leaf Workers' Welfare Fund (Ordinance), 2020.
24. The Kerala Labour Welfare Fund (Amendment) Ordinance, 2020.
25. *Supra* note19, 20, 21, 22, 23.
26. For example, different schemes initiated by the Labour Welfare Fund Board include High School Education Grant, Higher Education Grant, ITI Training Programme, Computer Training Programme, Medical/Entrance Coaching Benefit for meritorious students (limited number), Library Grant for libraries run by trade unions or other establishments for the welfare of workers, Marriage Benefit (Rs.7500), Maternity Benefit (Rs.15,000), Financial assistance to differently abled children, assistance for medical treatment, financial aid to purchase artificial device, post-death benefit, assistance for accidental death, assistance for cremation and assistance for civil service coaching, Kerala Labour Welfare Fund Board, *available at:* https://labourwelfarefund.in/scheme (last visited on Nov. 6, 2021).
27. Reserve Bank of India, "State-wise Ease of Doing Business Rank" (Oct. 13, 2020) *available at:* https://www.rbi.org.in/Scripts/PublicationsView.aspx?id=20117 (last visited on Nov. 8, 2021).
28. *Ibid.*

The Ease of Doing Business Index is based on the implementation of the Business Reform Action Plan (BRAP) recommended by the Department of Industrial Policy and Promotion (DIPP) to all states and union territories.[29] BRAP is an effort to create a conducive environment for the conduct of business by local firms. DIPP recommends that all states have a single-window system that provides all information on licences and permits necessary for starting a business. Other recommendations include automatic renewal of licences based on self-certification or third-party verification.

To execute its ease of business protocols, the government introduced a Labour Commissionerate Automation System. It allows for online registration of establishments in the Kerala Shops and Commercial Establishments Act, 1960, and its auto-renewal on payment of prescribed fee.[30]

The Kerala Micro Small Medium Enterprises Facilitation Act, 2019 was introduced with the specific objective to provide for exemption from certain approvals and inspections required for the establishment and operation of micro small and medium enterprises. In 2020, an amendment was issued to extend these exemptions to other enterprises under the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999. The Act was enacted to provide speedy clearances for all investments proposed to be made in areas designated as 'industrial areas' by the state, wherein any application filed shall be disposed of with recommendations to the concerned authorities approving/refusing the necessary licences within 30 days of application.[31] The Kerala Investment Promotion and Facilitation Cell (KIPFC)[32] has also been constituted to promote investments in the state and to ease the process of obtaining clearances/permits/licences necessary for establishment and operation of enterprises, and to monitor compliance of laws and regulations once the enterprise becomes operational.

Land and Natural Resources

The Kerala Minerals (Vesting of Rights) Ordinance 2020 seeks to vest the rights of minerals in the soil and sub-soil of the land in the state, except for the land covered by the Travancore Proclamation 1881 and Cochin Proclamation 1905. As per these proclamations, the right of mineral wealth in the land in Cochin and Travancore is vested in the government. However, the position in respect to the erstwhile Malabar area was unclear. It was settled by the full bench of the Kerala high court by a judgment dated 2 August 1999, wherein it was held that as far as the jenmom lands in the Malabar area are concerned, 'the minerals belonged to the government'. This judgment was reversed by the supreme court in 2013 in *Thressiamma Jacob* v. *Geologist*, *Department of Mining & Geology and others.*[33] The court examined the appeals arising out of this judgment and declared to the contrary: 'in relation to the ownership of rights over the mineral wealth in the land of the erstwhile Malabar area, ownership of mineral rights follows ownership of the land, unless owner of the land is deprived of the same by some valid process of law'. Hence, in the absence of a legislation for the aforementioned purpose, ownership of mineral wealth in the soil of the land in the Malabar area was vested in the owner of the property, unlike Cochin or Travancore, where the ownership of mineral wealth is vested in the government by proclamations.

29. *Supra* note 27.
30. The Shops and Commercial Establishments (Amendment) Ordinance, 2020.
31. In the original Act, the number of days was set at 45, which was later reduced to 30 days by KISVCB (Amendment) Act, 2019.
32. Kerala Micro, Small and Medium Enterprises (Amendment) Ordinance, 2020.
33. 2013 (9) SCC 725.

The legality of the said ordinance has been challenged in *J & P Sand and Aggregates International Pvt. Ltd.* v. *State of Kerala and Ors.*[34]

The Kerala Private Forests (Vesting and Assignment) Act, 1971 was enacted in furtherance of the vision of land reforms to provide for vesting of private forests in the state and for the assignment of land to agriculturalists and agricultural labourers. The Act provides for a protection clause whereby if a person is in possession of the land as a cultivating tenant, such land shall be exempted from vesting. Section 72K of the Land Reforms Act (LRA), 1963 categorically states that a certificate of purchase issued under LRA is conclusive proof that such land is assigned to the tenant and all rights, title or interests of the landowners or intermediaries in such land shall be thereby extinguished. In a recent judgment, the supreme court went one step further and held that a certificate of purchase issued under LRA is conclusive proof that the respondent has been in possession of the land as a cultivating tenant and that such forests shall be exempted from vesting under the Private Forest (Vesting and Assignment) Act, 1971. This is a judgment with longstanding implications, amounting to heavy loss of pristine forests in the state. Further, there is every likelihood that 90 percent of the private forest litigation pending before the high court of Kerala shall be ruled against the state. To undo this situation created by the judiciary, an ordinance[35] was issued in 2020. It clarified that the certificate of purchase issued under LRA may be used as evidence but not as conclusive proof that the land is under personal cultivation.

In 2020, three ordinances were pronounced on fishing and marine regulation: the Kerala Fish Auctioning, Marketing and Maintenance of Quality Ordinance; the Marine Fishing Regulation (Amendment) Ordinance and the Kerala Inland Fishing and Aquaculture Ordinance.

Cooperative Societies

Cooperatives is a subject in the state list. However, in the recent past, the union government has been increasingly trying to make forays into controlling cooperatives. The Banking Regulation (Amendment) Act, 2020 was introduced by the union government to bring the cooperative banks under the aegis of the Reserve Bank of India (RBI). The cooperative societies were brought under the aegis of RBI in 1965 for the first time, and, thereafter, they were under dual regulation – banking-related affairs were governed by the central government and the constitution and management of cooperative societies (including banks) by the state government. The recent amendments sought to extend the regulatory control of RBI over the cooperative banks in terms of management, capital, audit and liquidation. It intervenes in the internal management of cooperative banks by enabling RBI to prescribe conditions and qualifications for the Chairperson and Board of Directors, and to reconstitute Board of Directors if necessary, to ensure sufficient number of qualified members. The said amendment was proposed to reduce political interference in the appointment of officers of cooperative societies and improve the working style, reinstating the confidence of the public in the cooperative banking system in India. However, these amendments cut directly into the legislative powers of the state. The constitutional validity of these amendments has been challenged by the state government, and the matter is currently pending before the Kerala high court.[36]

34. WP (C) No. 26990 of 2020 (W).
35. Kerala Private Forests (Vesting and Assignment) (Amendment) Ordinance, 2020.
36. Hannah M. Varghese, "Kerala High Court Issues Notice To Centre, RBI On Plea Against Amendments To Banking Regulation Act (2021)", *Live Law*, Nov. 26, 2021, *available at:* https://www.livelaw.in/news-updates/banking-regulation-amendmentact-2020-kerala-high-court-notice-to-centre-rbi-186378 (last visited on Dec 1, 2021).

There have been major changes in the rural cooperative credit structure across the world. A committee constituted to study the short-term cooperative credit structure in Kerala recommended that the three-tier cooperative credit system followed in the state with the State Cooperative Bank at the top, District Cooperative Banks in the middle and Primary Agricultural Credit Societies at the bottom needs restructuring. It observed that the existence of two higher levels in the structure added to the cost without bringing significant benefit to the lower level. Hence, it was proposed to re-frame the existing three-tier system into a two-tier system. Accordingly, the Kerala Cooperative Societies (Amendment) Act was passed in 2019 calling for the merger of the District Cooperative Banks with the State Cooperative Bank. Kerala Bank was constituted by merging 13 District Cooperative Banks into the Kerala State Cooperative Bank.[37] A few of the District Cooperative Banks refused to be part of this process; the original amendment required a two-third majority for the resolution on merger, which was not obtained. In 2020, the Kerala Cooperative Societies (Amendment) Ordinance was passed to forcefully merge those societies which had not passed a resolution for merger.

Another ordinance pronounced in the cooperative sector sought to regulate the dairy cooperative societies in the state.[38]

Local Governance

A total of six ordinances were passed in the domain of local governance, three each with respect to panchayats and municipalities. The government altered the number of seats to be filled by direct elections in panchayats and municipalities by an ordinance, which was later passed as an Act [39]. Amendments were also made to facilitate postal and direct voting for persons affected by COVID-19 or those in quarantine for local self-government elections.[40]

Taxation

Three major ordinances were issued in the domain of taxation by the Kerala legislative assembly in 2020. These ordinances sought to address the financial crisis that the state fell into consequent to the unexpected situation created by the first and second waves of COVID-19 and the prolonged shut down of the state. All economic activities, barring a few, had come to a halt and the state took on a welfare role, redirecting its energies to control the spread of the pandemic. The effect of this situation on the state's financial health was completely disastrous.

In response to the constant demand of the states, the union government granted an additional borrowing of Rs.1471 crores as a one-time dispensation in addition to the three percent fiscal deficit of the GSDP to the state during the financial year 2019-2020. Such borrowings in addition to the fiscal deficit statutorily capped at three percent could only be possible by an amendment to the Kerala Fiscal Responsibility Act, 2003, and therefore an ordinance was issued to that effect.[41]

37. For more information, see the official website of the Kerala State Cooperative Bank, *available at*: https://keralacobank.com/about-us/ (last visited on April 18, 2022).
38. The Kerala Cooperative Societies (Second) Amendment Ordinance, 2020.
39. The Kerala Panchayati Raj (Amendment) Ordinance, 2020, Kerala Municipalities (Amendment) Ordinance, 2020.
40. The Kerala Pancayati Raj (Third Amendment) Ordinance, 2020, Kerala Municipalities (Third Amendment) Ordinance, 2020.
41. The Kerala Fiscal Responsibility (Amendment) Ordinance, 2020.

In view of the lockdown imposed to prevent the spread of COVID-19, all revenue collections also came down sharply. A major portion of the revenue collected was utilised for preventing the spread of the pandemic. Additional revenue mobilisation was necessary to overcome this situation. To generate additional revenue, the government of Kerala increased the sales tax on sale of foreign liquor such as bottled wine, bottled foreign liquor other than the wine or imported beer, and beer and wine not covered in the above classification.

Amendments were made in the Kerala State GST Act corresponding to the amendments incorporated in the Central Goods and Services Act as per the Union Finance Act, 2021, which were made on the recommendation of the GST Council.[42] Other measures were also proposed to generate extra revenue to manage the situation created by COVID-19, including deferment and reduction of salaries of government employees and public servants.[43]

Law and Religion

Another bill of serious socio-cultural implication that was passed was the Kerala Christian Cemeteries (Right to Burial of Corpse) Bill, 2020. It was enacted to put to rest the imbroglio created by the long-drawn land dispute between the Orthodox and Jacobite factions of the Christian community. In July 2017, the supreme court issued an order conferring the authority of around 1100 churches in Kerala on the Orthodox faction. Consequently, the churches, which were hitherto under the control of the Jacobite denomination, started to be taken over by the Orthodox denomination. This led to untoward events and disputes around who gets to be buried in a church cemetery: could a Jacobite person whose parish had now been taken over by the Orthodox faction get to be buried in the church cemetery where his/her family members had been buried? If yes, then will an Orthodox priest or a Jacobite priest conduct the funeral prayers? The situation escalated to such an extent that, in December 2019, the body of 92-year-old Mariamma was not buried for over six weeks. In the initial draft, the bill was extended to all Christians, but its operation was later restricted to the warring Jacobite and Orthodox factions as demanded by the opposition and recommended by the subject committee. The issue was debated in the Assembly for 4.43 hours.

As for other ordinances related to religion, an ordinance was promulgated to transfer the appointment of officers and employees in the Waqf Board to the State Public Service Commission. As per the Waqf Act, 1995 (Central Act), the authority to make recruitments is vested in the Waqf Board. A few years back, a move was made to transfer the appointments of the Devaswom Board to the Public Service Commission, which was met with severe resistance from the community. Thereafter the decision was taken to create the Special Recruitment Board for Devaswom Appointments.[44]

Police

The Kerala Police (Amendment) Ordinance and the Kerala Police (Amendment) Withdrawal Ordinance are classic examples of a state legislature being responsive to public criticism. The ordinance

42. The Kerala Goods and Services Tax (Amendment) Ordinance, 2020; the Kerala Goods and Services (Second Amendment) Ordinance, 2020.
43. Dealt with in detail under the Heading "Public Health" above.
44. The Kerala Devaswom Recruitment Board Act, 2015.

was notified by the government on November 21, 2020. It was severely criticised for violating the freedom of speech and expression and for its scary resemblance to the section 66A of the Information Technology Act, 2000, which had already been declared unconstitutional by the supreme court of India.[45] On November 23, 2020, the opposition as well as the active citizenry approached the high court of Kerala challenging the constitutional validity of the ordinance. The state government responded to the challenge by withdrawing the controversial ordinance on November 25, 2020.

Conclusion

The legislative activity in the assembly was limited owing to the ongoing pandemic and the state was governed mostly through ordinances. An examination of the nature of the ordinances shows that a significant number of them were issued for advancement of the welfare of the people - related to education, health and labour welfare. One major reason for creation of laws happens to be to undo the effect of judicial pronouncements. A set of laws in the domain of local government, taxation and public health were issued to combat the ongoing pandemic. It can be concluded that the state government was responsive to public opinion, indicated by the repeal of the controversial police ordinance as soon as people protested against it.

45. *Shreya Singhal* v. *Union of India,* AIR 2015 SC 1523.

MADHYA PRADESH

Aymen Mohammad[1]

Introduction

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

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

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

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

1. Doctoral Fellow, NALSAR University of Law.
2. HT Correspondent, "Madhya Pradesh Crisis: Timeline of Events Leading up to trust vote", *Hindustan Times*, March 20, 2020, *available at*: https://www.hindustantimes.com/india-news/madhya-pradesh-crisis-timeline-of-events-leading-up-to-trust-vote/story-skWr6iDcMjEqgDl8qrETaO.html (last visited on Jan. 27, 2022).
3. Interview with Dr. Anand Rai, *Caravan,* April 25, 2020, *available at*: https://caravanmagazine.in/health/mp-political-turmoil-responsible-for-covid-19-crisis-bhopal-indore-anand-rai-interview (last visited on Jan. 27, 2022).
4. *Supra* note 2.
5. *Shivraj Singh Chouhan* v. *Speaker Madhya Pradesh Assembly*, 2020 (5) SCJ 444.
6. Thomas Hale, Noam Angrist, *et. al*., "A global panel database of pandemic policies (Oxford COVID-19 Government Response Tracker)" 5 *Nature Human Behaviour* 529-538 (2021) *available at*: https://doi.org/10.1038/s41562-021-01079-8 (last visited on Jan. 27, 2022).
7. Louise Tillin, "Centre and States need to Coordinate, not Compete", *CASI*, June 2, 2021, *available at*: https://casi.sas.upenn.edu/iit/louisetillin (last visited on Jan. 27, 2022).
8. Act 53 of 2005.

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

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

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

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

9. Krishna Ram and Shivani Yadav, "The pandemic has worsened India's poverty crisis", *The Indian Express*, July 8, 2021.
10. HT Correspondent, "States' revenues dip by up to 80%, seek funds from Centre", *Hindustan Times*, April 27, 2020.
11. Neelam Pandey, "Madhya Pradesh finally gets a health minister after nearly a month of covid-19 crisis", *The Print*, April 22, 2020, *available at*: https://theprint.in/india/madhya-pradesh-finally-gets-a-health-minister-after-nearly-a-month-of-covid-19-crisis/406596 (last visited on Jan. 27, 2022).
12. Sidharth Yadav, "Every second migrant worker who returned to Madhya Pradesh from Maharashtra unemployed, reveals survey", *The Hindu*, Nov. 4, 2020.
13. *Supra*, note 3.
14. PTI, "Four officers among 89 health department staff in Madhya Pradesh test coronavirus positive", *News18*, April 16, 2020, *available at*: https://www.news18.com/news/india/four-officers-among-89-health-department-staff-in-madhya-pradesh-test-coronavirus-positive-2580225.html (last visited on Jan. 27, 2022).
15. Statistical statement related to the Vidhan Sabha Session, Madhya Pradesh Vidhan Sabha, 15th Vidhan Sabha, Fourth Session (Dec. 17, 2019 to Jan. 17, 2020), *available at*: https://mpvidhansabha.nic.in/stats/stat15thvs-4.pdf (last visited on Jan. 27, 2022).
16. Statistical statement related to the Vidhan Sabha Session, Madhya Pradesh Vidhan Sabha, 15th Vidhan Sabha, Fifth Session (March 16 to April 13, 2020) *available at*: https://mpvidhansabha.nic.in/stats/stat15thvs-5.pdf (last visited on Jan. 27, 2022).
17. Statistical statement related to the Vidhan Sabha Session, Madhya Pradesh Vidhan Sabha, 15th Vidhan Sabha, Sixth Session (March 24 to 27, 2020) *available at*: https://mpvidhansabha.nic.in/stats/stat15thvs-6.pdf (last visited on Jan. 27, 2022).
18. PTI, "As COVID-19 cases spike, Madhya Pradesh Assembly session to be curtailed", *Business Standard*, Sept. 15, 2020, *available at*: https://www.business-standard.com/article/current-affairs/as-covid-19-cases-spike-madhya-pradesh-assembly-session-to-be-curtailed-120091501143_1.html (last visited on Jan. 27, 2022).
19. *Ibid.*
20. Statistical statement related to the Vidhan Sabha Session, Madhya Pradesh Vidhan Sabha, 15th Vidhan Sabha, Seventh Session (September 21 to 23, 2020) *available at*: https://mpvidhansabha.nic.in/stats/stat15thvs-7.pdf (last visited on Jan. 27, 2022).

were presented, eight of which were enacted. Eight ordinances were tabled, of which four lapsed and four were replaced with government bills that were subsequently enacted.[21]

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

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

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

21. Madhya Pradesh Vidhan Sabha website, *available at*: https://mpvidhansabha.nic.in/bill_2020.htm, https://mpvidhansabha.nic.in/ordinance_2020.htm (last visited on Jan. 27, 2022).
22. *Supra* note 17.
23. For example, *see* Nico Steytler (ed.), *Comparative Federalism and Covid-19* (Routledge, Oxon, 2022).
24. *See*, Lockdown Advisories of the National Disaster Management Authority, March 24, 2020, April 14, 2020 and May 1, 2020, *available at*: https://ndma.gov.in/covid/NDMA-Orders_Advisories (last visited on Jan. 27, 2022).
25. Press Information Bureau, "Borrowing of money to meet GST revenue shortfall", Ministry of Finance, Sept. 20, 2020, *available at*: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1656927 (last visited on Jan. 27, 2022).
26. Press Information Bureau, "Borrowing options to meet the GST Compensation requirement for 2020-21", Ministry of Finance, Aug. 29, 2020, *available at*: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1649485 (last visited on Jan. 27, 2022).
27. Press Information Bureau, "Finance Minister announces Government Reforms and Enablers across Seven Sectors under Aatma Nirbhar Bharat Abhiyaan", Ministry of Finance, May 17, 2020, *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=1624661 (last visited on Jan. 27, 2022).

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

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

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

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

Legislative Survey

Statutory Legislation Enacted by the State Assembly

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

Madhya Pradesh Moneylenders (Amendment) Act, 2020[30]

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

28. Press Information Bureau, "Linking Farmers with Markets", Ministry of Agriculture & Farmers Welfare, Feb. 4, 2020, *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=1601897 (last visited on Jan. 27, 2022).
29. Milind Ghatwai, "MP proposes labour reforms to attract investment", *The Indian Express*, May 6, 2020.
30. Madhya Pradesh Act 16 of 2020.

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

Madhya Pradesh VAT (Amendment) Adhiniyam, 2020[34]

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

Madhya Pradesh Goods and Services Tax (Amendment) Act, 2020[37]

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

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

31. *Radhe v. Mehta*, 2 (2012) BC 699.
32. Reserve Bank of India, "Report of the Working Group on Digital Lending including Lending through Online Platforms and Mobile Apps" (Nov., 2021).
33. Arun Iyer, "AP, Kerala Govts seek to regulate NBFCs, MFIs", *The Economic Times*, June 1, 2010, *available at*: https://economictimes.indiatimes.com/news/economy/finance/ap-kerala-govts-seek-to-regulate-nbfcs-mfis/articleshow/5996474.cms (last visited on Jan. 27, 2022).
34. Madhya Pradesh Act 18 of 2020
35. Statement of Objects and Reasons, Madhya Pradesh VAT (Amendment) Adhiniyam, 2020.
36. The Constitution of India, Schedule VII, Entries 26 and 27 of List II.
37. Madhya Pradesh Act 19 of 2020.

(b) allowing input tax credit claims on debit notes related to previous financial years up to due date of return of September of the following year;

(c) allowing voluntarily registered taxable persons to apply for the cancellation of registration;

(d) allowing additional time to file an application for revocation of cancellation of registration;

(e) an enabling provision allowing the government (on the recommendations of the GST Council) to specify the categories of services or supplies for which a tax invoice shall be issued. Furthermore, the enabling provision allows the government to specify categories of services for which any other document instead of an invoice may be used. It also allows the government to exempt certain supplies or services from the requirement of an invoice;

(f) providing the manner and form in which a tax-deducted-at-source certificate may be issued;

(g) prescribing penalty for individuals who retain the benefit of transactions classified as offences by the principal Act;

(h) prescribing penalties for availing input tax credit without invoices/bills;

(i) determining time and manner for claiming transitional input tax credit; and

(j) redefining "transfer of business assets" as only when it is done for a consideration.

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

Madhya Pradesh Nagarpalik Vidhi (Tritya Sanshodhan) Adhiniyam, 2020[38]

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

38. Madhya Pradesh Act 20 of 2020.
39. Act 23 of 1956.
40. Act 37 of 1961.
41. Press Information Bureau, "Goa has joined five other States namely, Andhra Pradesh, Madhya Pradesh, Manipur, Rajasthan and Telangana, who have completed ULB reforms", Ministry of Finance, Feb. 11, 2021, *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=1697062 (last visited on Jan. 27, 2022).

Madhya Pradesh Anusuchit Janjati Rin Vimukti Adhiniyam, 2020[42]

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

(a) Every debt (including the amount of interest) advanced up to August 15 shall be deemed to be wholly discharged.

(b) Jurisdiction of civil courts will be barred for debt recovery.

(c) All proceedings pertaining to execution of any decree for money or proceedings for making final any preliminary decree for foreclosure or sale or proceedings in execution of any final decree for sale against a debtor are deemed to be withdrawn.

(d) Any property of the debtor that is attached pursuant to proceedings shall be released.

(e) Any person who is detained in a civil prison in execution of any decree for money passed against her/him by a civil court in respect of debt shall be released.

(f) Any pending suits against the debtor will abate.

(g) Pledged property and mortgage executed in favour of the creditor shall be released and stand redeemed, respectively.

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

Madhya Pradesh (Finance) Act, 2020[43]

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

42. Madhya Pradesh Act 17 of 2020.
43. Madhya Pradesh Act 21 of 2020.

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

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

Ordinances

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

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

Lapsed Ordinances

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

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44. Madhya Pradesh Finance Ordinance, 2020 (promulgated on Mar. 28, 2020), Madhya Pradesh Appropriation (Vote on Account) Ordinance, 2020 (promulgated on Mar. 28, 2020) and Madhya Pradesh Appropriation Ordinance, 2020 (promulgated on July 24, 2020).
45. Madhya Pradesh Nagarpalik Vidhi (Dwitya Sanshodhan) Adhyadesh, 2020 (Madhya Pradesh Municipal Laws (Second Amendment) Ordinance, 2020). The ordinance was replaced with an Act of the legislature in 2021.
46. Madhya Pradesh Tax Laws Arrears Settlement Ordinance, 2020. The ordinance was subsequently replaced by an Act of the legislature in February 2021.
47. Madhya Pradesh Private Universities (Establishment and Operation) Amendment Ordinance, 2020. The ordinance was eventually replaced with an Act of the legislature in 2021.

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

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

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

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

48. Madhya Pradesh Public Services (Guarantee of Delivery) (Amendment) Ordinance, 2020.
49. Ryan Calo and Danielle K. Citron, "The Automated Administrative State: A Crisis of Legitimacy", 70 *Emory Law Journal* 797 (2021). Also *see*, the International Association of Constitutional Law's Research Group on "Algorithmic State, Society and Market—Constitutional Dimensions", *available at*: https://iacl-aidc.org/index.php/en/research/research-groups/algorithmic-state-society-and-market-constitutional-dimensions (last visited on Jan. 27, 2022).
50. Madhya Pradesh Labour Welfare Fund Act, 1983 (Act 36 of 1983).

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

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

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51. Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 (Act. 20 of 2020); Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 (Act 21 of 2020); Essential Commodities (Amendment) Act, 2020 (Act 22 of 2020).
52. Press Information Bureau, "Impact of New Farm Laws", Ministry of Agriculture & Farmers Welfare, July 20, 2021, *available at*: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1737290 (last visited on Jan. 28 2022).
53. "Trade and commerce in, and the production, supply and distribution of…. The products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products."
54. Kashif Kakvi, "Madhya Pradesh: Govt Bill That Intends to Open Private Mandis, Faces Backlash", *Newsclick*, Sept. 7, 2020, *available at*: https://www.newsclick.in/Madhya-Pradesh-Govt-Model-Mandi-Bill-Open-Private-Mandis-Faces-Backlash (last visited on Jan. 27, 2022).
55. Kashif Kakvi, "New Laws Paralyse 70% of MP's Mandis in Six Months", *Newsclick*, Dec. 7, 2020, *available at*: newsclick.in/Fallout-Farm-Laws-New-Laws-Paralyse-70%25-MP-Mandis-Six-Months (last visited on Jan. 27, 2022).
56. Press Information Bureau, "President promulgates two Ordinances with the aim of giving a boost to rural India and agriculture", Ministry of Agriculture & Farmers Welfare, June 5, 2020, *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=1629750 (last visited on Jan. 27, 2022).
57. Milind Ghatwai, "MP Amends Mandi Act to allow agriculture marketing yards", *The Indian Express*, May 2, 2020.

Use of Executive Instruments to Encroach on Legislative Authority

Delegated Legislation on Public Health

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

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

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

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

Miscellaneous Pandemic-Related Executive Instructions

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

58. पत्र क्रमांक एफ 10-02/2020/सत्रह/मेडि-02, Mar. 7, 2020, Department of Health and Family Welfare, Government of Madhya Pradesh, available at: https://health.mp.gov.in/sites/default/files/2020-03/197-7-3-2020.pdf (last visited on Jan. 27, 2022).
59. Act 36 of 1949
60. Madhunika Iyer, "Madhya Pradesh Government's Response to COVID-19", *PRS Legislative Research*, India, April 18, 2020, *available at*: https://prsindia.org/theprsblog/madhya-pradesh-government%E2%80%99s-response-to-covid-19-january-2020-april-17-2020 (last visited on Jan. 27 2022).
61. *Ibid.*
62. Madhya Pradesh Epidemic Diseases, COVID-19 Regulations, 2020, No. PS/Health/17/Medi-3/595, Mar. 23, 2020, Madhya Pradesh Gazette, Government of Madhya Pradesh, *available at*: https://drive.google.com/file/d/1iPxCQtDL_PAbtyJZ9Ydh43dmRF8MwWFv/view (last visited on Jan. 27 2022).
63. क्रमांक 57/2020/दो/सी-1, Apr. 8, 2020, Department of Home Affairs, Government of Madhya Pradesh.
64. Act 10 of 1979.
65. PTI, "COVID-19: Night curfew in Madhya Pradesh's five cities from November 21", *The Economic Times*, Nov. 21, 2020, *available at*: https://economictimes.indiatimes.com/news/politics-and-nation/covid-19-night-curfew-in-madhya-pradeshs-five-cities-from-november-21/articleshow/79328175.cms (last visited on Jan. 27, 2022).

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

Labour 'Reforms' for Economic 'Revival' Post Lockdown

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

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

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66. *Supra* note 60.
67. PTI, "Coronavirus: Schools, cinema halls closed in Madhya Pradesh", *India Today*, Mar. 14, 2020, *available at*: https://www.indiatoday.in/india/story/coronavirus-schools-cinema-halls-closed-in-madhya-pradesh-1655338-2020-03-14 (last visited on Jan. 27, 2022).
68. News Desk, "Liquor shops in MP can be opened between 7 am and 7 pm, district collectors to take final call", *IndiaTV*, May 3, 2020, *available at*: https://www.indiatvnews.com/news/india/liquor-shops-to-open-in-madhya-pradesh-bhopal-indore-7-am-to-7-pm-coronavirus-lockdown-613611 (last visited on Jan. 27, 2022).
69. Divya A, "Madhya Pradesh reopens tourism sector for domestic travellers", *The Indian Express,* June 12, 2020, *available* at: https://indianexpress.com/article/cities/madhya-pradesh-reopens-tourism-sector-for-domestic-travellers-6456032 (last visited on Jan. 27, 2022).
70. "MP Home Department Issues Order to Prohibit Religious Programmes", *ANI*, July 14, 2020, *available at*: https://www.aninews.in/news/national/general-news/covid-19-mp-home-dept-issues-order-to-prohibit-religious-programmes20200714233309 (last visited on Jan.27, 2022).
71. Express News Service, "Covid-19: MP govt extends parole to convicts from 60 to 120 days", *The Indian Express*, May 14, 2020, *available at:* https://indianexpress.com/article/india/to-decongest-jails-due-to-covid-19-mp-govt-extends-parole-to-convicts-from-60-to-120-days-6409503/ (last visited on Jan. 27, 2022).
72. No. 247-2020-A-XVI, Madhya Pradesh Gazette, Apr. 24, 2020.
73. No. 957-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.
74. No. 956-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.
75. No. 959-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.
76. No. 953-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.
77. No. 958-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.
78. No. 954-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020 and No. 955-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.
79. Labour Department Letter No. 742/892/2020/A-16, Sept. 9, 2020.

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

Conclusion: Public Order, Social Welfare and Taxation

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

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

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80. Labour Department Letter No. क्र.46 अमुस/श्रम/2020, June 11, 2020.
81. क्र.-600-358-2020-ए- सौलह - Madhya Pradesh Gazette, Aug. 4, 2020.
82. Madhya Pradesh Municipality (User charges for Water Supply, Sewerage and Solid Waste Management Services) Rules, 2020. See rule 2(1)(o) *"User Charges" means charges imposed under provisions of section 132-A of the Madhya Pradesh Municipal Corporation Act, 1956 and section 127-B of the Madhya Pradesh Municipalities Act, 1961 for 100% percent recovery of expenditure incurred on Water Supply, Sewerage and Solid Waste Management Services.*
83. Sana Shakil, "94% NSA detainees in 2017, 2018 were from MP and UP: Centre", *New Indian Express*, Sept. 21, 2020, *available at*: https://www.newindianexpress.com/nation/2020/sep/21/94-nsa-detaineesin-20172018-were-from-mpand-up-centre-2200032.html (last visited on Jan. 27, 2022).
84. Amit Anand Choudhary, "SC raps MP govt. over detention of doc under NSA, nixes order", *The Times of India*, Oct. 31, 2021, *available at*: https://timesofindia.indiatimes.com/india/sc-raps-mp-govt-over-detention-of-doc-under-nsa-nixes-order/articleshow/87408287.cms (last visited on Jan. 27, 2022).
85. Milind Ghatwai, "Indore administration invokes NSA against two for cow slaughter", *The Indian Express*, June 23, 2020. *available at*: https://indianexpress.com/article/india/indore-madhya-pradesh-cow-slaughter-nsa-6471717 (last visited on Jan.27, 2022).
86. Rishav Raj Singh, "Madhya Pradesh HC Quashes NSA Charges Against Four Muslims, Directs State Govt to Pay 10k per Case", *The Wire*, Oct. 11 2020, *available at*: https://thewire.in/law/madhya-pradesh-high-court-nsa-charges-muslim-youths (last visited on Jan. 27, 2022).
87. PTI, "41 booked under NSA in 6 months for food adulteration in Madhya Pradesh", *New Indian Express*, Jan. 9, 2020, *available at*: https://www.newindianexpress.com/nation/2020/jan/09/41-booked-under-nsa-in-6-months-for-food-adulte-ration-in-madhya-pradesh-2087420.html (last visited on Jan. 27, 2022).
88. क्रमांक / एन.एच.एम. / परिवार कल्याण / 2020/87, Feb. 1, 2020.

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

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

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

89. क्रमांक / एन.एच.एम. / 2020 / 3755 भोपाल, Feb.21, 2020.
90. Rahul Naronha, "MP govt. orders recovery of special allowance from elite Hawk Force deployed for Naxal operations", *India Today*, Sept. 8, 2020, *available at*: https://www.indiatoday.in/india/story/mp-govt-orders-recovery-of-special-allowance-from-elite-hawk-force-deployed-for-naxal-operations-1719887-2020-09-08 (last visited on Jan. 27, 2022).
91. General Administration Department, क्रमांक एफ 19–87/2020/1/4, Dec. 24, 2020, *available at*: https://www.patrika.com/bhopal-news/kanya-puja-will-be-done-before-all-government-programs-in-mp-6592852/ (last visited on Jan. 27, 2022).

MAHARASHTRA

N. Vasanthi[1]

Introduction

Indian federalism is unique in its combination of unitary and federal features. Essential to its federalist structure is the inclusion of special provisions to address regional disparities. As against a coming together model of federalism, where the constituting states have agreed to join the federation and retain the right to withdraw from it, India is a holding together model.[2] In India, federalism was in existence even before the Constitution came into effect and the constituent assembly adopted a federal solution.[3]

The distribution of legislative and executive powers between the centre and states has been a vital component of federalism in India. It has also given the Indian supreme court a role to play in determining the scope of powers.[4] The skewed distribution of powers between the centre and the states has had many critiques.[5] Despite this criticism of the conferment of powers, there has been no systematic examination of the actual exercise of legislative power by the states. This survey examines the subjects on which the Maharashtra state government legislated and the instruments it used to exercise this power by moving away from a court-centric approach to a legislature-centric approach.

The year of study in this survey is 2020 – the year of the pandemic. The operation of federalism involved questions regarding the role, responsibilities, and powers of India's central and state governments. All states were not affected equally by the pandemic, and hence they did not respond to it in the same manner. From the early days of the pandemic itself, the need was for decentralized governance. In fact, several state governments had taken measures to deal with the pandemic even before the central government announced the national lockdown. After the national lockdown, it was apparent that state governments had a vital role in handling the situation. Innumerable notifications were issued under the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 by the central and state governments. These constituted the dominant method of handling the pandemic.

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1. Professor (Law), NALSAR University of Law.
   The author thanks Akshara Rajratnam, BA LLB (Year II), RML National Law University, Lucknow for research assistance.
2. For a detailed discussion see, A. Stepan, J. Linz, *et. al.*, *Crafting State-Nations: India and Other Multinational Democracies* (Johns Hopkins University Press, Baltimore, MD, 2011).
3. *See*, H.M. Seervai, I, *Constitutional Law of India* 166 (Tripathi, Bombay, 3rd ed., 1983).
4. *State of West Bengal* v. *Union,* (1964) 1 SCR 371, which held that the supreme authority of the courts to interpret the Constitution and invalidate action violative of the Constitution was India's predominant federal feature.
5. M.P. Singh, "The Federal Scheme" in Sujit Choudhry, Madhav Khosla, *et. al.* (eds.) *The Oxford Handbook of the Indian Constitution* 451-465 (Oxford University Press, UK, 2016). *See* Vidhi Centre for Legal Policy, "Cleaning Constitutional Cobwebs: Reforming the Seventh Schedule," (2019), *available at*: https://vidhilegalpolicy.in/research/cleaning-constitutional-cobwebs-reforming-the-seventh-schedule/(last visited on Jan. 21, 2022).

The lack of national legislation on public health and the lack of a plan for public health was evident.[6] Though states can legislate on health, sanitation, and public order under the Indian Constitution, the central government formed an inter-ministerial central team under the Disaster Management Act, 2005. This move impinged on the federalism principle, as several states like Andhra Pradesh, Tamil Nadu, Goa, Uttar Pradesh, Madhya Pradesh, and Assam had Public Health Acts which they could invoke.

The role of local bodies such as panchayats, municipalities, and municipal councils in handling the pandemic is another facet of federalism. This review of laws, bills, ordinances, rules, and regulations in Maharashtra engages with the quotidian exercise of power during the pandemic.

In 2020,[7] Maharashtra proposed legislations in both the state and the concurrent lists. The survey looks at proposed and passed legislation, which includes draft bills proposing amendments to state and central laws. It also examines ordinances, regulations, and notifications issued during this period.

The most significant proposals from Maharashtra were amendments to the Indian Penal Code (IPC), 1860 and the Criminal Procedure Code (CrPC), 1973 on sexual assault. The executive proposed ordinances on an eclectic range of issues, including amendments to the Maharashtra Goods and Services Tax (GST) Act, 2017 regarding filing returns, and amendments to the Municipal Councils Act regarding elections to municipal councils and cooperatives. A critical issue was the postponement of elections to various local bodies.

Quantitative Profile

Thirty-six bills were proposed in 2020. These bills covered subjects from both the state and concurrent lists. The areas covered in the state list were agriculture, land, municipalities and panchayats, public service, taxation, and salaries and allowances of the members of the Maharashtra legislature. The areas in the concurrent list included amendments to criminal law (Shakti Bills), education, labour, public trust, and food safety. The state legislature passed three of the 36 bills proposed. The executive promulgated 21 ordinances and proposed 19 bills to replace them. Out of the 19, only seven bills were passed by the House, replacing the ordinances.

The executive used ordinances to amend several legislations, such as the Maharashtra Cooperative Societies Act, the Mumbai Municipal Corporation Act, 1888, the Maharashtra Municipal Corporations Act, 1949, the Maharashtra Municipal Councils, Industrial Townships and Nagar Panchayats Act, 1965, the Maharashtra Goods and Services Tax Act, 2017 and the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963.

Qualitative Profile

The qualitative review has three parts: Part A looks at the legislations introduced to handle the pandemic; Part B studies the state's exercise of its ordinance-making power, and Part C covers state amendments to central legislation.

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6. Kiran Kumar Gowd, Donthagani Veerababu, *et al.,* "COVID-19 and the legislative response in India: The need for a comprehensive health care law" *Journal of Public Affairs*, e2669 (Mar. 21, 2021).
7. The material for the survey has been sourced from Manupatra, PRS, India Code, and a general internet search. The Maharashtra Legislature website (http://mls.org.in/index.aspx) had nine bills, including bills seeking public opinion, such as the Farm Bills, the Shakti Bill, and the Goods and Services Tax Amendment Bill.

Handling the Pandemic

The pandemic was an unprecedented disaster that threw huge challenges to governments across the world. In this context, it is important to examine how the Maharashtra government exercised its power to manage the pandemic. This review picks up two areas for closer examination: public health and labour.

Under entry 6 of list II, state governments can legislate on public health, sanitation, hospitals, and dispensaries. Under sections 2, 3, and 4 of the Epidemic Diseases Act, state governments have the power to take special measures and prescribe regulations when faced with an epidemic threat. Maharashtra was one of the states that bore the brunt of the pandemic. It responded by issuing a slew of regulations and advisories from various government functionaries.[8] The first such regulation issued on March 13, 2020, invoked general powers under the Epidemic Diseases Act, 1897. Subsequently, on March 14, 2020, the government issued the Maharashtra COVID-19 Regulations under sections 2, 3, and 4 of the Epidemic Diseases Act, 1897.[9] These regulations imposed obligations on hospitals, both private and government, to have separate screening corners for screening of suspected COVID-19, all hospitals must record travel history, history of contacts with suspected or confirmed cases of COVID-19 was to be recorded, in case of persons with any such history of travel to affected areas in the last 14 days was required to home quarantine and persons who did not home quarantine were quarantine in facilities set up by the government.

In the absence of a statute, these notifications became the primary method of dealing with public health during the pandemic. According to the Bombay Chamber of Commerce,[10] the Maharashtra government issued 34 notifications in the period between the first lockdown on March 14 and December 30, 2020. These included notifications from the commissioner of police, labour commissioner, Thane district office, and the government. Notification No. Corona-2020/C.R.97/Aarogya-5 issued, on August 31, 2020, by the Public Health Department amending and extending previous notifications invoked the enabling provisions of the IPC, Maharashtra Essential Services Maintenance (Amendment) Act, 2011, Maharashtra Nursing Homes (Amendment) Act, 2006, Bombay Public Trust Act, 1950 in addition to the earlier notifications, the Epidemic Diseases Act and the Disaster Management Act. This notification addressed access to medical facilities. It set out the extent of the problem regarding access to health care during the pandemic. It noted that Public Charitable Trusts which were running Charitable Hospitals have an obligation to set aside 10% of operational beds for indigent patients and had an obligation to earmark an additional 10% at concessional rates. However, patients who did not have insurance or whose insurance was exhausted were being charged exorbitant amounts. In light of these

8. For instance, 6 notifications were issued by the Public Health Department.
   Govt. of Maharashtra, Public Health Dept, Notification No. Corona 2020/C.R. 58/Arogya-05, dated March 14, 2020.
   Govt. of Maharashtra, Public Health Dept, Notification No. Corona2020/C.R.58/Health, dated March 14, 2020.
   Govt. of Maharashtra, Public Health Dept, Notification No. Corona2020/C.R.58/Health, dated April 30, 2020.
   Govt. of Maharashtra, Public Health Dept, Notification No. Corona 2020/C.R. 97/Arogya -05, dated May 21, 2020.
   Govt. of Maharashtra, Public Health Dept, Notification No. Corona 2020/C.R.97/Arogya-05, dated Aug. 31, 2020.
   Govt. of Maharashtra, Public Health Dept, Notification No. Corona-2020/C.R.97/ Arogya-05, dated Dec. 15, 2020.
9. The Maharashtra COVID-19 Regulations, 2020, Public Health Dept., Govt. of Maharashtra, dated March 14, 2020, *available at*: https://arogya.maharashtra.gov.in/pdf/30.pdf (last visited on April 15, 2022).
10. For an exhaustive list of the notifications issued in this period, see, Bombay Chamber of Commerce and Industry, "COVID-19 Archives", *available at*: http://www.bombaychamber.com/knowledgecenter?CovidArchives.html and http://bombaychamber.com/knowledgecenter?CovidArchive.html (last visited on April 15, 2022).

conditions several directions were issued including, directing charitable hospitals to discharge their obligations before charging patients for services; healthcare providers to make all efforts to increase bed capacity. It determined that, throughout Maharashtra excluding the Municipal Corporation of Greater Mumbai(MCGM) 80% of total operational bed capacity would be regulated by prescribed rates and within the MCGM 80% of isolation beds and 50% on non-isolation beds would be under the control of the Commissioner Mumbai, patients would receive treatment at applicable rates on first come first serve basis and COVID patients treated at any hospital would be charged according to rates prescribed.

Non-payment of wages to workers and the withdrawal of other labour protections available under labour laws was a significant impediment to welfare during the pandemic. Labour is a concurrent subject, and the central and state governments adopted different approaches towards the crisis. Soon after the declaration of the lockdown on March 20, 2020, the labour commissioner of Maharashtra issued an advisory to employers not to terminate the services of workers and not to reduce their wages; neither could employees be deemed to be on leave without pay. The advisory was also against the termination of the services of casual and contract workers. It suggested treating the absence of any employee during the lockdown as a period spent on duty.[11] However, there were no provisions that specified the consequences if the advisory was breached.

This advisory from the state government came before the central government responded to the question of livelihoods affected by the lockdown. At the central level, the Ministry of Home Affairs issued an order, on March 29, 2020, regarding workers' entitlements during the pandemic. Clause (iii) of the order directed all employers to pay workers their wages without deduction.[12] This order was challenged in the supreme court on the ground that it was arbitrary, illegal, irrational, unreasonable, and violative of articles 14 and 19. It was also contrary to the principles of equal pay for equal work and no work no pay. The petitioners, some of whom were medium and small-scale enterprise owners, claimed that the government could not impose financial obligations on the private sector. In an order dated June 12, 2020, the court preferred an amicable solution to a legal resolution between the parties. In para. 36, it held that:

> "It cannot be disputed that both industry and labourers need each other. No industry or establishment can survive without employees/labourers and vice versa. We are thus of the opinion that efforts should be made to sort out the differences and disputes between the workers and the employers regarding payment of wages of above 50 days and if any settlement or negotiation can be entered into between them without regard to the order dated 29.03.2020, the said steps may restore congenial work atmosphere."[13]

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11. Office of the Commissioner of Labour, CL/IR/COVID/2020/Desk-, dated March 20, 2020, *available at*: http://bombaychamber.com/admin/uploaded/NEWS%20Block/COVID%2019%20-%20NOT%20TO%20TERMINATE%20SERVICES%20OF%20EMPLOYEES%20OR%20REDUCE%20THEIR%20WAGES%20DURING%20THE%20SHUT%20DOWN.pdf (last visited on April 15, 2022).
12. Clause (iii) of the order: "All the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their workplaces, on the due date, without any deduction, for the period their establishments are under closure during lockdown period."

    Ministry of Home Affairs, No. 4-3/2020-DM-I(A), dated March 29, 2020, *available at*: https://www.mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforement%20of%20lockdown%20measures%20-%2029.03.2020_0.pdf (last visited on April 15, 2022).
13. *Ficus Pax Private Ltd. and Ors.* v. *Union of India and Ors.*, MANU/SC/0477/2020.

Before the supreme court finally heard the matter, there was high court ruling which evinced a more sensitive approach. The Aurangabad bench of the Bombay high court, in *Rashtriya Shramik Aghadi* v. *the State of Maharashtr*a, held that:

> "This Court cannot turn a Nelson's eye to an extraordinary situation on account of (the) Corona virus/COVID-19 pandemic. Able-bodied persons, who are willing and desirous to offer their services in deference to their deployment as contract labourers in the security and housekeeping sector of the trust, are unable to work since the temples and prima facie, places of worship in the entire nation have been closed for securing the containment of (the) COVID-19 pandemic. Even the principal employer is unable to allot the (sic) work to such employees in such (a) situation. I feel that the principle of "no work no wages" cannot be made applicable in such extraordinary circumstances. The court cannot be insensitive to the plight of such workers, which has unfortunately befallen them on account of the COVID-19 pandemic."[14]

The Maharashtra government's notification on March 30, 2020 followed the March 20 advisory that all workers who had to stay at home due to the lockdown would be deemed to be on duty and would receive full salary and allowances. Another notification issued by the Directorate of Industrial Safety and Health granted factories relaxations from sections 51, 52, 54, and 56 of the Factories Act from May 8 2020 to June 30, 2020. The exemption allowed factories to extend the workday to 12 hours and weekly working hours to 60. The increase in working hours was to be compensated by payment of overtime wages at twice the rate of wages.[15]

The high court of Maharashtra found their hands tied when parties sought relief during the pandemic since the supreme court was also seized of the matter. The high court initially had held that it was disinclined to interfere with the state government's orders directing full wages to be paid. However, it later ordered the state not to take coercive action against the employers based on the government's orders. Since it was represented before the court that the matter was pending in the supreme court, the former was persuaded to stall the matter rather than instruct the state government to enforce its orders.

Exercise of Ordinance-Making Power

Ordinances are a unique mechanism in the Indian Constitution, conferring on the executive, which has no law-making role or power ordinarily, the power to make laws. Articles 123 and 213 of the Constitution confer ordinance-making power on both the president and the governor respectively.

A relic of the colonial rule, serious reservations were expressed in the constituent assembly against incorporating such a power. Despite these reservations, it was incorporated based on 'necessity'. D.C. Wadhwa has painstakingly documented and exposed the executive's widespread (mis)use of this power.[16] In fact, he filed public interest litigation (PIL) in the supreme court, highlighting that

14. WP 4013 of 2020, dated May 12, 2020, *available at*: https ://www.livelaw.in/pdf_upload/pdf_upload-374784.pdf (last visited on April 15, 2022).
15. Days after this decision, the government of Uttar Pradesh took a cabinet decision to grant employers exemption from implementing many of the labour laws for three years. The Madhya Pradesh government made amendments to the Contract Labour Act, Factories Act, Industrial Disputes Act, and MP Industrial Relations Act, reducing protections under these laws.
16. D C Wadhwa, *Repromulgation of Ordinances: Fraud on the Constitution* (Gokhale Institute of Politics and Economics, 1983).

ordinances flouting the constitutional mechanism of legislative oversight were routinely used in law-making by the executive.[17]

The executive uses this power to promulgate an ordinance with a limited life and re-promulgates it as many times as it deems fit, thus bypassing the need for legislation. The executive does not specify the necessity for the ordinance even though the Constitution expressly requires that the power is to be exercised only if necessary. In practice, judicial review of ordinances does not extend to evaluating their necessity.[18] Commentators observing the powers of the Indian executive such as Subhankar Dam, point out that ordinances have been promulgated every year since 1950. These ordinances, which cover an eclectic range of subjects, rarely spell out the contingencies that make them necessary.[19]

Issuance of ordinances is not only a violation of the principle of separation of powers but also a direct infringement of the constitutional and legal rights of citizens. Since ordinances are not subject to discussion in the public domain before promulgation, they violate the people's right to participation. Further, since they create temporary rights, they can be withdrawn at any time by the executive with no liability attached. In *Krishna Kumar v. State of Bihar,* the state government took over private schools through ordinances and promulgated seven ordinances without passing a law or placing the ordinances before the legislature.[20] The status of teachers in these schools remained unclear for more than 20 years, as they were not considered government teachers and could not draw the salaries of government teachers, but the government had taken over the schools. Since ordinances are temporary, they were held not to create 'enduring rights'. While Subhankar Dam has documented the use of ordinance-making power by the centre, the use of ordinances by states has received less attention.

Many of these themes play out in the survey year in Maharashtra. Ordinances were promulgated both before and after the declaration of the lockdown.

On a quantitative level, Maharashtra passed fewer ordinances in 2020 than in previous years. Twenty-one ordinances were passed covering nine areas, including cooperatives, contingency fund, public universities, regional and town planning, professional tax, and village panchayats; as many as six ordinances on municipal corporations, municipal councils, nagar panchayats and industrial townships; two on Agricultural Produce Marketing Committees (APMC) and three on GST.

These areas cover items in both the state list and the concurrent list. Areas in the state list include cooperatives, municipal councils, village panchayats, contingency funds, and regional and town planning. Agriculture has always been an essential item in the state list. Similarly, education is in the concurrent list, and GST, once part of sales taxes under the state government, is now a matter where both the centre and the state share jurisdiction.

The state legislature replaced many of these ordinances with bills. This seems to be a result of the supreme court's decision in the *Krishna Kumar* v. *State of Bihar* case.[21] Justice Chandrachud held that it

17. *D.C. Wadhwa v. State of Bihar*, (1987) 1 SCC 378.
18. For a detailed discussion on the evaluation of ordinances, see Subhankar Dam, "Making Motives Count: Judicial Review of Ordinances in India", 33(2) *Statute Law Review* 81 (2012).
19. Subhankar Dam, "Constitutional Fiat: Presidential Legislation in India's Parliamentary Democracy" 24(1) *Columbia Journal of Asian Law* 1 (2010).
20. *Krishna Kumar v. State of Bihar*, (2017) 3 SCC 1.
21. *Ibid.*

was an unavoidable obligation on the executive to place the ordinances before the House. He held that the legality of the ordinances would be affected if they were not placed before the Assembly. The judge introduced a procedural check of placing the ordinances before the House rather than substantively evaluating the ordinances. This decision of the supreme court neither checked the validity of the ordinance utilising the criterion of necessity nor asked why the executive used the ordinance route instead of the legislative route.

Consequently, despite these seminal decisions of the supreme court, the larger question of when the executive may invoke the ordinance-making powers remains unanswered.[22] The use of these powers in such an egregious manner is unprecedented. While ordinance issuance in the past have been used as an interim measure, it has not been used to impinge upon central laws as these ordinances proposed. The fact remains that though courts have condemned the arbitrary and excessive use of the ordinance-making power, they have not distinguished it from ordinary legislative power.

Most of the bills proposed in Maharashtra were first enacted as ordinances and later converted into bills. This is a standard route adopted by governments at the state and central levels. The Farm Bills were also first promulgated as ordinances and later replaced with bills. While many bills took the ordinance route in Maharashtra, a few were introduced directly as bills. The Shakti Bills, which increased punishment for sexual offences against women and set up special courts for these offences, did not take the ordinance route. It may be recalled that the Criminal Law (Amendment) Bill, 2013 took the ordinance route before being passed by parliament.

In addition to the areas covered by ordinances, the proposed bills covered employment, food safety and standards, public trusts, criminal law, housing, education, legislative members' salaries, and land acquisition spread over the concurrent and state lists.

A successful challenge to the executive's ordinance-making power was in the context of agricultural markets. The government of Maharashtra first introduced two ordinances, Ordinance 2 and 3 of 2020, suggesting amendments to Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963. These were later introduced as bills the Maharashtra Agricultural Produce Marketing (Development and Regulation) (Amendment) Bill, 2020, on February 25, 2020 and the second Amendment Act 11/2020, introduced on March 14, 2020.

The need for promulgating these ordinances arose from a decision of the Bombay high court (Aurangabad bench) in 2019. In the *Sanjay Tukaram Autade* v. *State of Maharashtra* case,[23] the single judge of the high court struck down the appointments made to the market committee under section 13(1C) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963. This section was introduced first as an ordinance in June 2015 and then re-promulgated twice before the Amendment Act was enacted in 2016. It provided for special invitees on every market committee, who would be experts in the field of agriculture, agricultural processing, agricultural market, law, economics, or commerce.

This section was challenged on the ground that it was introduced for political reasons, specifically to accommodate members of the ruling party. The petition alleged there were no guidelines or rules

22. In 2020, Uttar Pradesh and Gujarat promulgated ordinances to suspend all labour laws.
23. WP No. 12084 of 2015, dated July 19, 2019, *available at*: https://indiankanoon.org/doc/146927371/ (last visited on Jan. 20, 2022).

framed for such appointees; there was no nexus between the provision and the objectives of the Act; it was therefore violative of Article 14. The petition further contended that the section also violated Article 19(1)(c) and (g). The petitioner alleged that the state government, by the exercise of this power, could interfere in the affairs of the market committee, a duly elected body. Further, these committees had elected representatives of agriculturists, elected directors from village panchayats, and traders and there was no need for expert members.

The high court engaged with the issue at two levels: (i) were the amendments necessary and (ii) how was the power exercised? The first question involved a high standard of judicial engagement as it asked for a review on due process. The state contended that this was a matter of government policy and beyond the scope of judicial review. The high court agreed with this contention by quoting the precedent of the supreme court that "legislative malice is beyond the jurisdiction of the law courts". The petitioner had not questioned the legislative competence of the state. Since the legislature had the competence to enact, the amendment was deemed necessary. The court investigated the substantive aspects of the amendment to find that the expert members did not vote and hence could not interfere with the committee's functioning. The apex court had earlier held that the fact that non-experts were or may be appointed was not a good ground to hold the provision unconstitutional.

The second level of review was regarding the exercise of power. The court called upon the counsel for the state to place on record the procedure and considerations while appointing certain persons as experts. The court found that the persons whose names were recommended were committed workers of the ruling political party and did not possess any educational qualifications which would justify their being considered as experts. In addition, these candidates had lost the elections to the managing committee of the APMC. The court struck down the appointments as it found the discretion exercised by the government was arbitrary.

Following this decision, the Maharashtra government introduced Ordinance 2 of 2020 on January 31, 2020 deleting section 13(1C). The ordinance was placed on the floor of the House as a bill. In the second amendment ordinance, the government amended section 13 again to provide representation to women, other backward classes, and de-notified and nomadic tribes. There was no provision allowing for the nomination of experts. The state legislature passed the bill as Maharashtra Agricultural Produce Marketing (Development and Regulation) (Amendment) Act 11 of 2020.

The above sequence of events shows that there is no specific procedure or purpose for the use of the ordinance-making power. Thus, a statute could be amended through an ordinance to allow for nomination of experts to duly elected bodies. The power could again be deployed to delete provisions in a statute or to re-introduce a provision. In effect, it is indistinguishable from ordinary legislative power.

The broad use of the power can be seen in the context of Maharashtra Co-operative Societies (Amendment) Ordinance 12 of 2020, which sought to postpone elections to nearly 35,000 cooperative societies. The constitutional question that the petitioner raised was whether the state government could exercise its ordinance-making power to act contrary to the statute. This was a matter on which the supreme court had ruled as early as 1955 that executive power is undefined in India.[24] It is the power that remains after legislative and judicial functions have been taken away. It was held that executive power was to execute laws and included all inherent, implicit, and ancillary powers. Its exercise was

24. *Ram Jawayya Kapoor* v. *State of Punjab*, AIR 1955 SC 549.

not dependent on the existence of a statute as article 73/162 clearly indicates that the executive power extends to all matters on which the legislature is competent. The court refused to hold that the exercise of power by the executive is dependent on the existence of a law.

The petitioner claimed that the 35,000 cooperative societies were governed by the Maharashtra Co-operative Societies Act, 1960. The elections to these committees were due by the end of January 2020 but were postponed by orders of the state government. These orders were challenged and were struck down by the high court as arbitrary and also violative of article 243 of the Constitution and the Cooperative Societies Act. The state legislature passed a bill to enable the postponement of elections on the ground of natural calamity. Once the Disease Management Act was invoked in Maharashtra, the government again postponed the elections. It issued an ordinance providing for the extension of the term of the existing members. The ordinance was later passed as an Amendment Act. The petitioner claimed that there was a provision in the Act that allowed for the appointment of an administrator if elections could not be held; hence promulgation of the ordinance continuing the term of the earlier members was ultra vires and violative of articles 14, 19(1)(c), 243-ZJ, and 243ZK of the Constitution.

The high court did not address the substantive grounds raised by the petitioner and dismissed the petition on the ground of lack of *locus standii*.[25] The court did not delve into the question of whether an ordinance could suggest a different way of dealing with an exigency than what was provided in the statute. In this case, the conduct of elections, ordinarily considered a mandate of the statute which the executive could only implement, was first postponed by an order of the state government, then by an ordinance, and later by an amendment bill. The law-making powers of the executive and the legislature were seen as indistinguishable.

While the Bombay high court dismissed the petition, a similar petition in the Calcutta high court prompted the court to examine the issue of appropriate use of executive power.[26] Justice Sanjib Banerjee examined the propriety of executive action, which the state claimed was necessary due to the COVID-19 situation. The Calcutta high court was examining the postponement of elections in municipal corporations. Citing the unusual circumstances of the pandemic, the executive had passed a notification postponing elections and continuing the term of the previous office bearers, which the petitioner claimed was a backdoor entry without the mandate of the people. The claim by the petitioner was that in light of the pandemic, health and hygiene were critical issues, and municipal corporations were important agencies assigned with the responsibility to tackle the pandemic. The petitioner essentially claimed that the executive had no authority to suspend elections, and the same could only be done by the legislature. The state responded by stating that the niceties of separation of powers could not be adhered to when public interest and the lives of citizens were at stake. The state claimed that even if its power could not be sourced from the statute's wording, it could claim a residuary constitutional power to act in the public interest. Justice Banerjee, in pronouncing on the matter, held that the executive did not need to use its ordinance-making power. It could deal with the situation by just issuing a notification, and such an act was within constitutional propriety.

State amendments to Central Legislation

One of the prominent features of Indian federalism is the sharing of powers to legislate. Apart from the exclusive right to make laws on the state list, states share the power with the centre to legislate on

25. *Arun Yashwant Kulkarni* v. *The State of Maharashtra*, MANU/MH/0405/2021.
26. *Sharad Kumar Singh and Ors.* v. *The State of West Bengal and Ors*., MANU/WB/0634/.

matters listed in the concurrent list. Article 254(2) is often cited as the high point of federalism in India as it allows for a law made by the legislature of a state with respect to matters in the concurrent list to prevail in that state, even if it is in conflict with the central law, with a proviso that it must receive presidential assent. This allows for legislations like the Maharashtra Control of Organised Crime Act (MCOCA), 1999 to operate along with other central legislations like the Unlawful Activities Prevention Act (UAPA), 1967. The MCOCA contains several provisions which override the provisions of the Indian Evidence Act, 1872 with reference to confessions to a police officer. The doctrine of repugnancy, which would ordinarily have the central law prevail if there is a conflict between central and state laws, has been read down to apply only in cases where it is impossible for both laws to operate. In all other cases, if both laws can operate, they will be allowed to operate. The preference for the doctrine of pith and substance, which allows an incidental entrenchment without affecting the vires of the legislation, has been considered the hallmark of federalism. Using the doctrine of pith and substance, provisions of the MCOCA which encroached upon items in the central list were held to be valid.[27]

In exercise of such powers to amend or add to central laws, Maharashtra proposed contentious amendments to the following central legislations: Indian Penal Code (IPC), 1860, Code of Criminal Procedure (CrPC), 1973 and the Protection of Children from Sexual Offences Act (POCSO), 2012. Two bills were introduced in the state legislature on December 14, 2020—the SHAKTI Criminal Law (Maharashtra Amendment) Bill, 2020 and the Maharashtra Exclusive Special Courts (for certain offences against women and children under SHAKTI Law) Bill, 2020. The SHAKTI bills were opened for suggestions and were referred to a joint select committee. The state amendments were proposed to increase protection for women and children from sexual offences by prescribing harsher punishments and ensuring speedy investigation and trial.

The amendments to IPC proposed by the SHAKTI amendments were to increase penalties for failure to register a first information report (FIR), failure to furnish information or provide assistance in the investigation of offences against women. This goes against the recommendations of the Verma Committee, which took into account that basic safety measures on crimes against women were not enforced with any amount of efficacy and those were more important than prescribing draconian punishments. The committee observed that the non-registration of FIRs in cases of sexual assault was observed by the ministry of home affairs in its memorandum in as early as 2009[28] but no effective measures were in place. The Verma committee noted that the executive was fully aware of the minimum steps that needed to be taken to ensure the safety of women. The committee also took note of the need for reforms: to hold the police accountable; to consider the inordinate delay in investigation as a serious misconduct; to ensure the right to register an FIR at the nearest police station/online was protected; and other measures.

However, in place of measures that enhance accountability on a holistic basis, the proposed amendments merely increase penalties and impose harsh punishment. There are increased penalties for failure to share data with the investigating officer by social media platforms, and internet or mobile telephone data providers. The amendments propose that life imprisonment may be enhanced to imprisonment for the remainder of natural life or death. The central law currently provides for ten years or life imprisonment, which does not necessarily mean the remainder of natural life and does

27. *Zameer Ahmed* v. *State of Maharashtra*, (2010) 5 SCC 246.
28. JS Verma, Leila Seth, *et al*, "Report of the Committee on Amendments to Criminal Law" (2013) *available at*: https://archive.nyu.edu/handle/2451/33614 (last visited on April 18, 2022).

not include the death penalty. The Verma committee had clearly indicated that the death penalty for rape was a regressive step. The central law was amended in 2018 to increase the penalty from 7 years to 10 years. The SHAKTI amendments also propose to add a new provision, section 354 E, to provide for punishment in cases of intimidation of a woman by any mode of communication in addition to insulting her modesty. The most contentious amendment is the introduction of section 182A, which imposes penal liability for filing false complaints. The section provides for simple imprisonment of up to one year with or without a fine in case of filing a false complaint or providing false information to a public servant in cases of acid attacks, outraging the modesty of a woman, sexual harassment of women, human trafficking of women, and rape.

The SHAKTI bills amendments to the CrPC include an additional section 37A, which makes it mandatory to share information available on social media platforms and with internet or mobile telephone data providers, including an intermediary or a custodian, in relation to crimes against women and children. Section 37 CrPC states that the public is duty bound to assist a magistrate or police officer in the discharge of their duties. Amendments are also proposed to section 100, which allows the police to call upon independent and respectable inhabitants to witness the search and seizure. The state amendment proposes to include public servants or social workers recognised by the Women and Child Development Department of the Maharashtra government in place of independent witnesses. The most contentious proposals are to complete the investigation within 15 days and to complete the trial within 30 days. The provision on anticipatory bail is made inapplicable to sexual offences against women. The amendments also propose to deny the special powers of the high court and the court of session to grant bail under section 439 CrPC.

The SHAKTI bill amendments to POCSO continue the harsh punishments as envisaged in the IPC. These include the death penalty in exemplary cases. Similar provisions regarding enhanced penalties for failure to share data have been made.

The second bill, the Special Courts Bill, establishes one or more exclusive special courts in each district. These courts can try cases filed under offences other than the specified offences if an accused is charged with them. Special public prosecutors for such trials, special police teams with at least one-woman police officer, and women personnel are sought to be constituted. Institutions providing medical and psychiatric support, legal and financial aid are proposed to be set up. Section 10 provides for a Women and Children Offenders Registry, which would contain full details of persons convicted of specified offences. The registry is proposed to be linked to the National Registry of Sexual Offenders.

The bills have come under heavy criticism from several quarters, including feminist groups.[29] In a memorandum to the Maharashtra government, they expressed shock that such a draconian law was being proposed in the name of curbing widespread violence against women and girls. The memorandum pointed to various studies questioning the death penalty's efficacy in curbing crimes. It also pointed out that such provisions make it dangerous for women as the sentence for rape and murder are the same. It also highlighted studies that showed that in cases of POCSO, more than half the offences were committed by persons known to the child, and the death penalty only made the reporting of such crime more difficult, along with increasing the trauma of the child. The memorandum affirmed that the certainty of investigation, trial, and punishment should be the guiding principle rather than

29. Civil society memorandum to the Maharashtra government on the Shakti Bill, *available at*: https://www.newsclick.in/sites/default/files/2020-12/Memorandum-to-Maharashtra-Government-About-Shakti-Bill.pdf (last visited on Jan. 19, 2022).

the severity of punishment. The bill was referred to a joint select committee. Several police officers expressed reservations on the provisions of the bill. They cited hundreds of cases where trials could not be completed for two to three years. They also said that the provisions to hurry up the investigation might lead to botched-up investigations.[30]

Conclusion

The review of the exercise of legislative power in Maharashtra in 2020 showed that executive powers were excessively relied on during the pandemic. The Westminster Model of parliamentary democracy that India adopted rests on the executive's actions being scrutinised by several state institutions, including by the legislature.[31] This study revealed that the principle was only 'absently present' in Maharashtra as well as in the other states. The executive dominated the legislature by first exercising legislative power through ordinances and then by converting them into bills.

The state legislature passed more ordinances into bills than original bills. There was little distinction between executive law-making and legislative law-making. The executive handled the pandemic using laws not geared to deal with its specific context. Instead of deliberating on how to handle the pandemic, the executive came up with piecemeal and discordant responses to even critical issues like protection of labour and public health. The high court made limited attempts to hold the executive accountable to constitutional principles of non-arbitrariness and separation of powers, but largely deferred to executive discretion. The only area in which the legislature played a major role in 2020 was the introduction of the SHAKTI amendments to criminal laws. Instead of using the ordinance route, these bills were introduced in the legislative assembly, proposing amendments to central legislation.

Since criminal law is in the concurrent list, the state may propose amendments that are repugnant to the central law and the state laws shall prevail on receiving assent as under Article 254(2). This bill brings to fore the restraint that presidential approval can impose on hastily formulated bills

30. Mohamed Thaver, "Draft Shakti Bill debated by review committee, several reservations raised", *The Indian Express*, Nov. 5, 2021, *available at*: https://indianexpress.com/article/cities/mumbai/draft-shakti-bill-debated-by-review-committee-several-reservations-raised-7607735/ (last visited on Jan. 19, 2022).
31. Guillermo O'Donnell, "Horizontal Accountability in New Democracies" in Marc F. Plattner, Andreas Schedler, *et. al.* (eds.), *The Self-Restraining State: Power and Accountability in New Democracies* 29 (Lynne Rienner Publishers, 1999).

ODISHA

Rahul Mohanty[1]

Introduction

This survey will examine the legislations passed in Odisha in 2020. Its purpose is to identify legislative priorities of the government and the trends and practices that affected law-making in the state during that year. The article is divided into three parts: the first discusses the coronavirus pandemic and legislations made to tackle it. It also highlights some of the deficiencies in the legal response – which was primarily driven by subordinate legislation even though separate legislation addressing the issue of medical emergencies may have been more useful.

In the second part, legislations pertaining to labour and industries have been surveyed. It elucidates the shift in policy priorities and examines how the government's emphasis on ease of doing business and promoting medium and small-scale enterprises (MSMEs) has impacted its legislative agenda.

The third and final part briefly encapsulates other legislations, including social legislations, and legislations pertaining to the education sector.

Shadow of COVID-19 Pandemic

The year 2020 will be long remembered as the year of COVID-19—the year when a pandemic brought major changes to the world, affecting all levels of society. Tackling the pandemic required major changes in the operations of the government as well as the private sector entities. It also required amendments to legislations.

The pandemic first surfaced in India, in January 2020, and became widespread by March, necessitating a nationwide lockdown. From a legislative point of view, the Budget session (which is conducted from February to March), was conducted as usual. It focused on issues such as agriculture, education, nutrition, and infrastructure development. The health sector was allocated Rs. 7700 crores, which amounted to 4.6 percent of the budgeted expenditure of the state.[2] The impact of COVID-19 led to some changes in spending priorities, as exemplified by a 20 percent increase in the health budget of the state, bringing it to 5.3 percent of the total planned expenditure in 2021-2022.[3] The pandemic also necessitated a supplementary budget to respond to impact on health, food, social security, livelihoods,

1. Assistant Professor (Law), NALSAR University of Law.
2. *See* the Odisha Appropriations Act, 2020 along with the Budget Speech 2020, *available at*: https://finance.odisha.gov.in/sites/default/files/2020-05/Budget_Highlights_English_2.pdf (last visited on Nov. 5, 2021).
3. *See* Odisha Appropriations Act, 2021 along with the Budget Speech 2021, *available at*: https://finance.odisha.gov.in/sites/default/files/2021-02/Budget%20highlights%202021-22-Eng.pdf (last visited on Nov. 5, 2021).

etc.[4] An additional allocation of Rs. 1627 crores was made for public healthcare, and Rs. 1077 crores for COVID-19 assistance and food security during the pandemic.[5]

The pandemic-induced lockdowns had a major impact on finances of the states – there was a big fall in the indirect tax revenues.[6] The states had to either adopt austerity measures or increase their borrowings. As per available data, Odisha had the highest percentage difference between estimated borrowings and actual borrowings for the fiscal year 2021-2022. This was enabled by the union increasing the borrowing limit from three percent to five percent of the gross state domestic product (GSDP) of the states.[7] Odisha subsequently amended its Fiscal Responsibility and Budget Management (FRBM) legislation during the 2021 budget session to avail an additional two percent of the GSDP borrowing during the fiscal year 2020-2021.[8]

The pandemic's impact on the finances of the state also highlighted the importance of maintaining sufficient contingency funds.[9] To deal with the pandemic, the state increased the limit of the its contingency fund from Rs. 400 crores to Rs. 2,000 crores by amending the Odisha Contingency Fund Act, 1967.[10]

The pandemic led the governments to introduce various emergency legislations.[11] Using the Disaster Management Act, 2005,[12] the union government notified the pandemic as a 'disaster' on March 24, 2020.[13] Prior to this, on March 11, 2020, the government also advised the states to invoke section 2 of the Epidemic Diseases Act, 1897, to introduce enforceable regulations to prevent the spread of the virus.[14] This section authorises state governments to take measures and prescribe 'temporary regulations' that may be necessary to prevent the outbreak or spread of the epidemic, if it thinks that ordinary provisions of law are insufficient for such purpose.[15]

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4. Government of Odisha, "First Supplementary Statement of Expenditure, 2020-21", *available at*: https://finance.odisha.gov.in/sites/default/files/2020-11/First_Supplementary_Budget-2020-21_Eng_0.pdf (last visited on Nov. 10, 2021).
5. *Ibid.*
6. Pramit Bhattacharya and Tauseef Shahidi, "How the pandemic crunched state budgets in India", *Livemint,* April 4, 2021, *available at*: https://www.livemint.com/economy/how-the-pandemic-crunched-state-budgets-in-india-11618378427620.html (last visited on Oct. 31, 2021).
7. Asit R. Mishra, "Govt raises states' borrowing limits for FY21 to 5% of GSDP from 3% now", May 17, 2020, *Livemint, available at*: https://www.livemint.com/news/india/govt-raises-states-borrowing-limits-for-fy21-to-5-of-gdp-from-3-5-now-11589701382466.html (last visited on Oct. 31, 2021). .
8. The Odisha Fiscal Responsibility and Budget Management (Amendment) Act, 2021 (Act 11 of 2021), s. 2.
9. A contingency fund is an extra-budgetary source of funds that is placed at the disposal of governors for meeting any unforeseen expenditure, pending appropriation made by the legislature.
10. Odisha Contingency Fund (Amendment) Ordinance, 2020 (Ordinance 2 of 2020), s. 2. Later enacted into the Odisha Contingency Fund (Amendment) Act, 2020. A greater emphasis on contingency funds and increase in their limits was a trend seen in many other states such as Karnataka, Maharashtra, Uttar Pradesh: the Karnataka Contingency Fund (Amendment) Act, 2020; the Maharashtra Contingency Fund (Second Amendment) Ordinance, 2020; the Uttar Pradesh Contingency Fund (Amendment) Ordinance, 2020.
11. The Epidemic Diseases Act, 1897 (Act 3 of 1897).
12. The Disaster Management Act, 2005 (Act 53 of 2005).
13. Government of India, National Disaster Management Authority, Order no. 1-29/2020-PP (Pt. II), March 24, 2020.
14. Bindu Shajan Perappadan, "States to be asked to invoke Epidemic Disease Act: Centre", *The Hindu,* March 11, 2020, *available at*: https://www.thehindu.com/news/national/coronavirus-states-to-be-asked-to-invoke-epidemic-disease-act-centre/article31043653.ece (last visited on Nov. 12, 2021).
15. *Supra* note s. 2.

The government of Odisha notified the COVID-19 pandemic as a 'disaster' under section 2(d) of the Disaster Management Act, 2005 on March 13, 2020.[16] To better deal with the pandemic, the state promulgated an ordinance on April 8, 2020, amending some of the provisions of the Epidemic Diseases Act.[17] This amendment added an additional sub-clause to section 2(2) of the Act, giving the state additional rule-making powers related to procurement of goods, services and equipment necessary for control and prevention of the epidemic. In addition, it also introduced a penal provision for disobeying orders or regulations made under this legislation, punishable with imprisonment of up to two years or a fine of up to Rs. 10,000.[18]

The government also laid down several regulations and guidelines pertaining to the COVID-19 pandemic. From March 2020 to October 2021, within about 18 months of the pandemic hitting Odisha, the government passed more than 160 regulations and guidelines to deal with it.[19] These regulations, among other things, authorised specific officials to define and enforce the rules related to containment zones; impose responsibilities on housing societies, hospitals, schools, universities;[20] impose rules about usage of masks and sanitisers; impose social distancing norms;[21] decentralise and empower panchayats to carry out certain functions to handle the pandemic; and deal with issues arising out of the return of migrant workers to their homes and so on.[22]

The state also passed several regulations pertaining to the media. For instance, one order dated March 21, 2020 provided for privacy of the pandemic-affected patients and their families, and prohibited the media from interviewing or publishing the name and address of the infected, their relatives or their doctors.[23] Subsequent media regulations were, however, much broader. The COVID-19 regulations dated April 3, 2020 provided that:

> "No person/institution/organization will use any print/electronic/social media for information regarding COVID-19 without prior permission of the DMET (Director, Medical Education & Training), DPH (Director of Public Health), DHS (Director of Health Services) or Collector or Medical Superintendent as the case may be. This is to avoid spread of any unauthenticated information and/or rumours regarding COVID-19. If any person/institution/organization is

16. Government of Odisha, Revenue and Disaster Management (Disaster Management) Department Notification no. 1706/R&DM (DM), Mar. 13, 2020.
17. The Epidemic Diseases (Amendment) Ordinance, 2020 (Ordinance 1 of 2020), Odisha, No.3723-I-Legis-15/2020/L.
18. It is noteworthy that the union government also amended the Epidemic Diseases Act later in April 2020, through an ordinance (passed by the parliament later in September 2020). Epidemic Diseases (Amendment) Act, 2020 (Act 34 of 2020) w.e.f. April 22, 2020. This amendment specifically empowered the union government to prescribe regulations for inspection and detention of bus, train, vehicle, aircrafts leaving or arriving in the territory to which the law applies. It also introduced a provision to protect health care service personnel against violence during epidemics by making it a punishable offence. The amendment also deemed any violation of regulations or orders made under this legislation an offence punishable under section 188 of the Indian Penal Code, 1860. However, it is interesting to note that even prior to this amendment, prosecutions under section 188 of the IPC for violations of orders made under section 2 of the Epidemic Diseases Act have been successful (*See*, *J. Choudhury* v. *State of Odisha*, AIR 1963 Ori 216).
19. These notifications can be viewed at: https://health.odisha.gov.in/health-guidelines.html (last visited on Nov. 5, 2021).
20. *See* for e.g. the Odisha COVID-19 Regulations 2020, Apr. 3, 2020, No. HFW-SCH-I_EMER-001-2020 9570/H.
21. *See* for e.g. the Odisha COVID-19 (Amendment) Regulations 2020, Apr. 9, 2020, No. HFW-SCH-I_EMER-001-2020 9695/H.
22. Government of Odisha, Revenue and Disaster Management (Disaster Management) Department Notification no. 2232/R&DM (DM), April 19, 2020.
23. Government of Odisha, Health and Family Welfare Department, Order no. 8005/HA-Misc-01/2020, March 21, 2020.

found indulging in such activity, it will be treated as a punishable offence under these Regulations and other provisions of Law."[24]

It also gagged anyone other than the medical superintendent or persons authorised by them from speaking to the media. Such regulations were a setback to the civil society and NGOs, which attempted to independently verify the government's COVID-19 numbers and audit the efficacy of governmental actions.

In addition to the amendments to the Epidemic Diseases Act and the regulations made thereunder, the state introduced several other enactments to streamline the economic transactions impacted by COVID-19 and enable digital transactions. For instance, it amended the Court Fees Act, which now allowed for online payment of court fees instead of physical purchase of stamps.[25] This was in furtherance of the Odisha high court's decision to operate through video conferencing, conduct livestreaming of court room proceedings and allow e-filing.[26]

The loss of livelihoods caused by the lockdowns required the state to provide support to various professions, industries and workers. For instance, the Odisha Advocates' Welfare Fund was amended to enable the Bar Council to provide monetary assistance to lawyers during natural calamities, in addition to the previous grounds of death and superannuation.[27]

To deal with the logistical difficulty of serving physical notices on delinquent officials, the government also enacted the Odisha Local Fund Audit (Amendment) Act, 2020. It introduced a provision to serve any decision, order, summons, notice or other communication through a newspaper announcement or affixing it in a conspicuous place, in addition to online communication through the human resources management system (HRMS) portal of the state.[28]

Among the other logistical relaxations effected by the state, the government also extended the due dates for filing various indirect tax returns and compliances. This necessitated an amendment in the Odisha Goods and Services Act, 2017, which now conferred power on the government to extend deadlines for compliances in cases of *force majeure*, including epidemics.[29] The state also executed time-limit extensions, waiver of late fees, allowing of e-invoicing and so on through delegated legislations.[30]

Omission and Missed Opportunities in the Legislative Agenda on the Pandemic

Odisha's legislative response to the COVID-19 pandemic, particularly its amendments to the Epidemic Diseases Act, 1897, was very limited, and mostly enabled through subordinate legislations.

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24. The Odisha COVID-19 Regulations, 2020, April 03, 2020, No. HFW-SCH-I_EMER-001-2020 9570/H.
25. Court Fees (Odisha Amendment) Act, 2020.
26. PTI, "Odisha Assembly passes bill to allow e-payment of court fee", *New Indian Express*, Oct. 10, 2020, *available at*: https://www.newindianexpress.com/states/odisha/2020/oct/01/odisha-assembly-passes-bill-to-allow-e-payment-of-court-fee-2204502.html (last visited on Nov. 13, 2021).
27. The Odisha Advocates' Welfare Fund (Amendment) Act, 2020.
28. The Odisha Local Fund Audit (Amendment) Act, 2020, s. 2.
29. The Odisha Goods and Services Tax (Amendment) Ordinance, 2020 (Ordinance 5 of 2020), later enacted into the Odisha Goods and Services Tax (Amendment) Act, 2020, s. 3.
30. See the Odisha Ministry of Finance notifications pertaining to GST, *available at*: https://finance.odisha.gov.in/notification/gst?page=1 (last visited on Nov. 5, 2021).

The lack of an existing epidemic management system caused the government to respond in an ad hoc manner to the various crises as they developed. This is illustrated in the difficulties that arose due to the return of migrant workers to Odisha. First, there was confusion as to whether they should be allowed to return to the state. The Odisha high court ordered that they must test negative before they were allowed to return. It directed "the state government to ensure that all migrants who are in queue to come to Orissa should have tested COVID-19 negative before boarding the conveyance."[31] This order was subsequently stayed by the supreme court.[32]

To its credit, the government of Odisha did recognise that the returning migrant workers needed assistance and attempted to respond to it. It created a single portal for the registration of travellers coming into Odisha (including migrant workers).[33] Within 48 hours of the launch of this portal, 4.82 lakh people had reportedly registered to return.[34] It set up help desks and facilitated trains for the migrant workers who wished to return, and provided them online e-passes and medical camps at major locations with provision of food and accommodation.[35] To ensure containment of the virus, contact tracing and quarantine norms were adopted. The village panchayats were directed under the Disaster Management Act to set up a registration facility and to make the necessary arrangements for temporary accommodation, food, water and sanitation of the quarantined migrant workers.[36] They were authorised to administer any gratuitous relief under the supervision of the District Disaster Management Authority and provide Rs. 2000 as an incentive to the quarantined persons. The government also provided some additional wages to workers under the Mukhyamantri Karma Tatpara Abhiyan or Mukta Yojana (MUKTA) and special monetary assistance to landless farmers registered under the Krushak Assistance for Livelihood and Income Augmentation (KALIA) Scheme.

The relative success in pre-registration, quick setting up of infrastructure and a decentralised assistance system helped contain the infection and led many to showcase Odisha's success in handling the pandemic, especially the migration crisis.[37]

However, the government's ad hoc steps left many of the problems created by the pandemic unaddressed. For instance, other than the unemployment crisis, food security was imperilled and had created a

31. *Narayan Chandra Jena* v. *State of Odisha*, WP (c) No. 11573 of 2020, Odisha High Court Order dated May 7, 2020.
32. Live Law News Network, "SC stays Orissa HC Order on mandatory COVID-19 testing for migrants to enter Odisha", *Live Law*, May 8, 2020, *available at*: https://www.livelaw.in/top-stories/sc-stays-orissa-hc-order-on-mandatory-covid-19-testing-for-migrants-to-enter-odisha-156440 (last visited on Nov. 12, 2021).
33. *See*, COVID-19 Odisha State Portal, Online Registration of Persons Travelling to Odisha at: https://covid19regd.odisha.gov.in/migrant-registration.aspx (last visited on Nov. 6, 2021).
34. Ashutosh Mishra, "Odisha Govt Ill-Prepared to Handle the Lakhs of Migrant Workers Coming Home", *The Wire,* May 4, 2020, *available at*: https://thewire.in/government/odisha-migrant-workers-quarantine-jobs (last visited on Nov. 13, 2021).
35. S. Meher and J. Nanda, Nabakrushna Choudhury Centre for Development Studies, Bhubaneswar, "COVID-19 and Migrant Workers- Challenges and Opportunities for Odisha", working paper no. 79, (2020) p.17, *available at*: https://ncds.nic.in/sites/default/files/WorkingandOccasionalPapers/WP79NCDS.pdf (last visited on Nov. 13, 2021).
36. Government of Odisha, Revenue and Disaster Management (Disaster Management) Department Notification no. 2232/R&DM (DM), April 19, 2020.
37. Coalition for Disaster Resilient Infrastructure, NDMA, "Response to Covid-19 – Odisha", (2021) *available at*: https://ndma.gov.in/sites/default/files/PDF/covid/response-to-covid19-by-odisha.pdf (last visited on Dec. 2, 2021).

hunger crisis.[38] The first phase of the National Family Health Survey (2019-2020) showed an increase in the number of underweight and severely wasted children under the age of five in as many as 16 states![39]

It is also pertinent to mention Odisha's disaster management system, which has been lauded as an effective and well-oiled machinery that quickly responds to any natural disaster. One of the reasons for such efficiency is because it is supported by the Odisha State Disaster Management Authority, which was established after the 1999 super cyclone (and accorded statutory backing in 2005).[40] Subsequently, the disaster management policy devised departmental plans, a relief code and detailed operational manuals for the state, district and village levels, which helped conduct routine activities. It is hoped that the state can similarly build upon its experiences during the pandemic to create a public health response system to efficiently deal with any such crises in the future.

Legislative Agenda on Industry and Labour

The long lockdowns implemented in 2020 resulted in many workers losing their jobs. Industrial losses caused a sharp drop in income, a rise in unemployment, casualisation and impoverishment.[41] The lockdowns during April-May 2020 caused as many as 100 million job losses, some of which, subsequently, became permanent job losses.[42] In Odisha, the growth rate during 2020-2021 fell to -4.91 percent[43]—particularly labour-intensive sectors like industry (-8.83 percent), construction (-10.79 percent), manufacturing (-9.90 percent). In the service sector, hospitality and tourism saw sharp reductions.[44] The pandemic, along with the cyclone Amphan, also led to a 8.83 percent contraction in the agriculture sector and caused major job losses.[45]

These circumstances led the government to take measures to ease the burden on industries, and kickstart the economy, which, in turn, it was hoped would improve employment. Legislative initiatives in this sector were primarily motivated by the government's desire to ease the burden of doing business and to improve competition. The government has carved out many exemptions specifically for the MSMEs, which are generally more labour-intensive compared to larger enterprises.

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38. Ruma Bhargava and Megha Bhargava, "COVID-19 is creating a hunger catastrophe in India – here's an opportunity to break the cycle", June 15, 2021, *available at*: https://www.weforum.org/agenda/2021/06/covid-19-pandemic-hunger-catastrophe-india-poverty-food-insecurity-relief/ (last visited on Dec. 2, 2021); Kavitha Iyer, "Hunger sweeps India in Covid's shadow as millions miss out on rations", *The Guardian*, July 14, 2021, *available at*: https://www.theguardian.com/global-development/2021/jul/14/hunger-sweeps-india-in-covids-shadow-as-millions-miss-out-on-rations (last visited on Dec. 2, 2021).
39. National Family Health Survey-5 (2019-2020), Key indicators from 22 states/UTs from phase-I, *available at*: http://rchiips.org/NFHS/NFHS-5_FCTS/NFHS-5%20State%20Factsheet%20Compendium_Phase-I.pdf (last visited on Dec. 3, 2021). It is also noteworthy that India's ranking in the Global Hunger Index has changed from 94 in 2020 to 101 in 2021, much below its neighbours, and ahead of only 15 countries. *See*, Global Hunger Index Scores By 2021 GHI Rank, *available at*: https://www.globalhungerindex.org/ranking.html (last visited on Dec. 20, 2021).
40. See Odisha Finance Department Resolution No. IFC- 74/99-51779/F, Dec. 28, 1999.
41. Rosa Abraham, Amit Basole *et al., State of Working India 2021– One year of Covid-19,* (Centre for Sustainable Employment, Azim Premji University, 2021), *available at*: https://cse.azimpremjiuniversity.edu.in/state-of-working-india/swi-2021 (last visited on Nov. 18, 2021).
42. *Ibid.*
43. Planning and Convergence Department, Directorate of Economics and Statistics, "Economic Survey of Odisha, 2021-22" (Government of Odisha, Feb. 2021) *available at*: https://pc.odisha.gov.in/sites/default/files/2021-02/Odisha%20Economic%20Survey%202020-21.pdf (last visited on Nov. 18, 2021).
44. *Ibid.*
45. *Ibid.*

This trend can be observed in the amendments carried out by Odisha, through an ordinance in July 2020, in the Industrial Disputes Act, 1947. The amendment increased the threshold of applicability of the Act from 100 to 300 workers.[46] It permitted industrial establishments employing less than 300 workers to lay-off, retrench and close their establishments without seeking prior government approval.[47] Practically all establishments, except for a few large factories and manual labour-intensive large establishments, could act at whim, risking the livelihoods of many.

In October 2020, the state also brought simultaneous amendments to the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 through ordinances,[48] to increase the threshold of their application as well. The latter Act was earlier applicable to any 'establishment' having 20 or more workers. The 20 threshold was present to exempt small and micro enterprises, typically run by families and individuals. The amendment increased the threshold applicability to establishments having 50 workers.[49] As a result, more establishments and their 'principal employers' or contractors did not have to register with the labour department and were not subject to any regulation or compliances under the Act. It is interesting to note that, as per the Economic Census of Odisha in 2013, about 82 percent of all 'establishments' were non-agricultural, accounting for about 83 percent of the total workers employed in the state, and the average employment per establishment was two to three persons.[50] The Odisha Economic Survey 2021, under the Contract Labour (Regulation and Abolition) Act, revealed that only 131 principal employers and 2006 contractors registered in the state during 2019-2020. The new amendment would further reduce this already small number.[51]

Similarly, the Factories Act amended the definition of factory to increase the employee threshold from ten to twenty (for factories using power in the manufacturing process) and 20 to 40 (for factories not using power in the manufacturing process).[52] It also provided an enabling power to the government to exempt any new factory or class or description of new factories from all or any of the provisions of the legislation for a period of 1000 days from the date on which their commercial production starts.[53] The maximum allowed overtime was also increased from 75 to 115 hours. It is noteworthy that, prior to these amendments, the government, had amended the Factories Rules to allow shifts of 12 hours, instead of eight hours, in factories in May 2020.[54]

These two ordinances were passed by the legislative assembly and enacted in the subsequent winter session. It is noteworthy that the amendments were adopted by the Assembly on the same day that they were tabled, with very little discussion and very little opposition.[55] Similar ordinances increasing the

46. Industrial Disputes (Odisha Amendment) Ordinance, 2020 (Ordinance 8 of 2020).
47. Subsequently this position has been adopted by the union government, which has repealed and subsumed the Industrial Disputes Act, 1947 into the Industrial Relations Code, 2020. Industrial Relations Code, 2020 (Act 35 of 2020), s. 77.
48. The Contract Labour (Regulation and Abolition) (Odisha Amendment) Ordinance, 2020 (Ordinance 13 of 2020) and the Factories (Odisha Amendment) Ordinance, 2020 (Ordinance 14 of 2020).
49. The Contract Labour (Regulation and Abolition) (Odisha Amendment) Ordinance, 2020 (Ordinance 13 of 2020), s. 2.
50. Directorate of Economics and Statistics, "State Report on Sixth Economic Census of Odisha" (2013), *available at*: http://www.desorissa.nic.in/pdf/sixth-eco-census-report.pdf (last visited on Dec. 18, 2021).
51. Supra note 43 at 38.
52. The Factories (Odisha Amendment) Ordinance, 2020 (Ordinance 14 of 2020) s. 2.
53. *Id.* s. 3.
54. Labour and ESI department, Government of Odisha, Notification no. LL2-FE-0003-2020-2716/LESI, May 8, 2020.
55. See the Daily Brief Record of Proceedings, Nov. 24, 2020, Odisha Legislative Assembly, 16th Assembly, 5th Session, Bulletin no. 5.

threshold applicability or even outright suspending the application of labour welfare legislations,[56] were also been passed in other states like Uttar Pradesh, Bihar, Assam, Madhya Pradesh, Goa and Gujarat.[57]

The government justified these changes by claiming that they were intended to "facilitate investment, generation of employment and counter the hardships caused to MSMEs due to (the) COVID-19 pandemic."[58] These changes allowed a greater number of factories and establishments to hire and fire employees at will. There was little or no oversight regarding provision of facilities to the workers. In a state where labour welfare legislations were already being honoured more in the breach than in observance, it is worth pondering whether the new ordinances would indeed generate employment or would only displace the burden of the pandemic from the employers onto the workers. The fear that these changes would adversely affect marginal workers, especially women, youth and contract workers, who were already struggling due to the pandemic, were legitimate. Constitutionality of these enactments aside, it is worth asking if the ease of doing business should be accorded greater priority than the constitutional values of promoting, protecting and respecting people's livelihoods.[59]

The Essential Services (Maintenance) Act was also modified, to expand the definition and scope of 'essential services' and to allow the state government to declare strikes illegal if it thought that the strike would affect the continuance of a public utility service.[60] The amendment also imposed disciplinary action on state government employees for participating in 'illegal strikes'. Further, it made funding 'illegal strikes' an offence punishable with a fine of Rs. 5000 or imprisonment up to one year or both.[61] These amendments, which were justified in the name of improving the delivery of public services, in practice restricted employees' rights of association, assembly and strikes.

To further the government's agenda to promote infrastructure development and generate employment, the Assembly passed the Odisha Industrial Development Corporation (Amendment) Bill, 2020. The Odisha Industrial Development Corporation (IDCO) was set up under the Odisha Industrial Development Corporation Act, 1980 to act as the nodal agency of the state government to secure, assist and develop industrial regions, developmental projects, and special economic zones (SEZs). This amendment empowered IDCO to take up 'social infrastructure projects', which included everything from power supply, sewerage and effluent treatment plants to educational institutions, universities, hotels, multiplexes, resorts, sports complexes, commercial complexes, healthcare facilities and tourism projects.[62]

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56. *See*, for e.g., Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020.
57. Aanchal Magazine, "States compete to bring in sweeping changes to labour laws, 'competition to attract capital', say analysts", *The Indian Express*, May 24, 2020, *available at*: https://indianexpress.com/article/business/economy/states-changing-labour-laws-competition-attract-capital-analysts-6424424/ (last visited on Nov. 20, 2021).
58. Debabrata Mohanty, "Odisha govt moves amendments to University and Factories Act as assembly session starts", *Hindustan Times*, Sep. 30, 2020, *available at* : https://www.hindustantimes.com/india-news/odisha-govt-moves-amendments-to-university-and-factories-act-as-assembly-session-starts/story-r5ni9SsyMPd0xUF59qdfCL.html (last visited on Nov. 20, 2021).
59. Although ensuring the right to adequate means of livelihood is a directive principle of state policy (article 39), states have the obligation to respect and not interfere with people's livelihoods without following due process, under article 21 of the Constitution (see, for e.g., *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180).
60. Odisha Essential Services (Maintenance) Amendment Act, 2020.
61. *Ibid*.
62. Odisha Industrial Development Corporation (Amendment) Act, 2020.

Other Legislations

In 2020, the Odisha government introduced a bill to amend the Odisha Universities Act, 1989. The Odisha Universities (Amendment) Act, 2020 centralises several functions of most state universities in Odisha.[63] The amendment brings all appointments, including administrative and teaching positions into the ambit of the Odisha Public Service Commission.[64] Similarly, the appointment of non-teaching staff would now be done by the Staff Selection Board.[65] It has changed the appointment procedure of important officials of universities, including the vice-chancellor, registrar and comptroller of finance by changing the composition of selection committees involved in their appointment.[66] The amendment has also changed the composition of governing bodies of the universities (called the 'Syndicate').[67]

This amendment was sought to be justified on grounds of filling massive vacancies in universities and improving their functioning. It has been criticised for impinging on the autonomy of the universities and its validity has been challenged before the Odisha high court.[68] The University Grants Commission (UGC), in its affidavit before the court, has also found some of the provisions, such as the one on the appointment of vice-chancellors, as not being in conformity with UGC guidelines.[69]

These amendments could have a far-reaching impact on the autonomy of universities. They will lose the freedom to set their own standards and requirements for hiring their teaching staff, with the public service commission using a one-size-fits-all approach to hiring in all universities. The universities will also lose the flexibility of hiring people in departments and for courses depending on where they are needed. Instead, university hiring would need to go through the additional bureaucratic rigmarole of the public service commission. The state's control over the process of appointing key administrative personnel such as the vice-chancellor and registrar may also advantage persons who are personally or ideologically aligned with the government. Thus, universities will find their authority compromised, with the government taking key decisions on hiring, resource allocation and curriculum development. How can liberal and free knowledge be advanced if universities are required to function under the shadow of such bureaucratic oversight?

During this year, the state also introduced the Odisha Municipal Laws (Amendment) Bill, 2020 to amend the Odisha Municipal Act, 1950, and the Odisha Municipal Corporation Act, 2003 to cap the reservation in urban local bodies at 50 percent.[70] This was in line with a prior decision of the Odisha high court, which was upheld by the supreme court. However, this bill was subsequently modified to include provisions on horizontal reservations for women, and was finally passed in September 2021.[71]

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63. Odisha Universities (Amendment) Act, 2020.
64. *Id*, s. 14.
65. *Id*, s. 15.
66. *Id*, s. 6-8.
67. *Id*, s. 10.
68. Lal Mohan Patnaik, "Odisha on validity of university amendment act: HC notice to Centre", *The Times of India*, Dec.17, 2020, *available at*: https://timesofindia.indiatimes.com/city/cuttack/odisha-on-validity-of-university-amendment-act-hc-notice-to-centre/articleshow/79774484.cms (last visited on Nov. 22, 2021).
69. Express News Service, "UGC takes stand against Odisha Universities Act", *The New Indian Express* June 22, 2021, *available at*: https://www.newindianexpress.com/states/odisha/2021/jun/22/ugc-takes-stand-against-odisha-universities-act-2319780.html (last visited on Nov. 22, 2021).
70. Odisha Municipal Laws (Amendment) Bill, 2020.
71. Odisha Municipal Laws (Amendment) Act, 2021.

Odisha also introduced the Odisha State Commission for Backward Classes (Amendment) Bill, 2020 which empowered the State Commission to undertake surveys of the social and educational conditions of the people belonging to the backward classes "*as may be decided by the State Government, from time to time*".[72] The bill was subsequently passed in January 2021. It is noteworthy that the Odisha State Commission for Backward Classes (OSCBC) Act was enacted in 1993. The first Commission was also set up in 1993, but it did not have any power to conduct these surveys. Further, after its tenure expired, it was never reconstituted. Neither were there reservations for OBCs in educational institutions and jobs, for which the state was criticised by the chairperson of the National Commission for Backward Classes in February 2020.[73] Subsequently, Odisha set up a new State Commission on Backward Classes. Odisha had demanded for a simultaneous socio-economic caste census along with the 2021 population census, which was turned down by the union government.[74] In this context, the state decided to empower the OSCBC to conduct its own social and educational surveys.

Trend of Legislating through Ordinances

Odisha passed a large number of ordinances in 2020. The pandemic and delay in the sessions seem to have provided the government an excuse to pass almost every law first as an ordinance and then table it as a bill in the state legislative assembly. This is reflected in the fact that most of the bills introduced in the assembly in 2020 had already been promulgated as ordinances.[75] Except for a few bills such as the Odisha Essential Services (Maintenance) Amendment Bill, the Odisha State Commission for Backward Classes (Amendment) Bill, and the Odisha Industrial Infrastructure Development Corporation Bill, the other bills had already been made into law through the ordinance route.

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72. Odisha State Commission for Backward Classes (Amendment) Act, 2020, s. 2.
73. Meera Mohanty, "Odisha finally gets a Commission for Backward Classes", *The Economic Times*, Feb. 12, 2020, *available at*: https://economictimes.indiatimes.com/news/politics-and-nation/odisha-finally-gets-a-commission-for-backward-classes/articleshow/74107136.cms?from=mdr (last visited on Nov. 22, 2021).
74. *Ibid*.
75. The following ordinances were promulgated by Odisha in 2020:
    1. Epidemic Diseases (Amendment) Ordinance, 2020 (Ordinance 1 of 2020).
    2. Odisha Contingency Fund (Amendment) Ordinance, 2020 (Ordinance 2 of 2020).
    3. Odisha Agricultural Produce and Livestock Contract Farming and Services (Promotion and Facilitation) Ordinance, 2020 (Ordinance 3 of 2020).
    4. Odisha Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Ordinance, 2020 (Ordinance 4 of 2020).
    5. Odisha Goods and Services Tax (Amendment) Ordinance, 2020 (Ordinance 5 of 2020).
    6. Odisha Goods and Services Tax (Second Amendment) Ordinance, 2020 (Ordinance 6 of 2020).
    7. Court-Fees (Odisha Amendment) Ordinance, 2020 (Ordinance 7 of 2020).
    8. Industrial Disputes (Odisha Amendment) Ordinance, 2020 (Ordinance 8 of 2020).
    9. Odisha Municipal Laws (Amendment) Ordinance, 2020 (Ordinance 9 of 2020).
    10. Epidemic Diseases (Odisha Second Amendment) Ordinance, 2020 (Ordinance 10 of 2020).
    11. Odisha Advocates' Welfare Fund (Amendment) Ordinance, 2020 (Ordinance 11 of 2020).
    12. Odisha Universities (Amendment) Ordinance, 2020 (Ordinance 12 of 2020).
    13. Contract Labour (Regulation and Abolition) (Odisha Amendment) Ordinance, 2020 (Ordinance 13 of 2020).
    14. Factories (Odisha Amendment) Ordinance, 2020 (Ordinance 14 of 2020).
    15. Odisha Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Second Ordinance, 2020 (Ordinance 15 of 2020).

The Constitution provides that the governor can promulgate an ordinance during recess of the state legislature only if he "*is satisfied that circumstances exist which render it necessary for him to take immediate action*."[76] The supreme court of India has made it inescapably clear that the power to promulgate ordinances is an extraordinary power, which has to be used only to meet extraordinary situations and not to serve political ends.[77] The 'satisfaction' of the government regarding existence of circumstances requiring promulgation of the ordinance in question is also not immune from judicial review.[78] The court in the *Krishna Kumar & Anr* v. *State of Bihar* case noted:

> "The Governor is required to form a satisfaction of the existence of circumstances which makes it necessary to take immediate action. Necessity is distinguished from a mere desirability. The expression "necessity" coupled with "immediate action" conveys the sense that it is imperative due to an emergent situation to promulgate an Ordinance during the period when the legislature is not in session."[79]

It accordingly held that courts could interfere if the ordinance had been promulgated to secure an oblique purpose, or on extraneous grounds.

Keeping the above principles in mind, one may question whether most of the ordinances issued in 2020 were required. Those amending the labour legislations and the Universities Act were introduced only a few weeks before the start of the session and, definitely, there was no urgency justifying their promulgation by the government. The intent seems to be to present the legislature with a fait accompli. However, considering that the ruling party Biju Janata Dal (BJD) enjoyed a large majority in the state legislature, the apprehension is inexplicable. Regular resort to ordinance-making seems to indicate that the government is using it as a routine procedure of law-making to enable it to gauge public opinion on the subject before it is enacted by the legislature.

This can be exemplified by the recent controversial farm laws, which were promulgated as ordinances in Odisha and sparked nationwide protests. Odisha passed the Odisha Agricultural Produce and Livestock Contract Farming and Services (Promotion and Facilitation) Ordinance, and the Odisha Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Ordinance, in May 2020, a few weeks before they were passed by Parliament. The government claimed that these ordinances would help remove fragmentation of agricultural markets, enable farmers to sell their produce anywhere and help set up private market yards, farmer-consumer market yards, etc.[80] These ordinances were not introduced in the Assembly as bills during the monsoon session, presumably due to the protests against very similar farm laws passed by the centre, and were re-promulgated later. During the winter session, the government introduced the Odisha Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Bill, 2020. However, the intense protests and the BJD's own position

76. The Constitution of India, art. 213.
77. See, e.g., *DC Wadhwa v. State of Bihar* (1987) SCR (1) 798; *Krishna Kumar Singh & Anr v. State of Bihar* (2017) 3 SCC 1 and *RC Cooper v. Union of India*, (1970) SCR (3) 530.
78. *Krishna Kumar Singh & Anr v. State of Bihar* (2017) 3 SCC 1.
79. *Ibid.*
80. Debabrata Mohanty, "Odisha dithers over its farming ordinances as monsoon session ends", *Hindustan Times*, Oct. 6, 2020, *available at*: https://www.hindustantimes.com/india-news/odisha-dithers-over-its-farming-ordinances-as-monsoon-session-ends/story-KHbqhVJI3xKgthCzAib1HL.html (last visited on Nov. 14, 2021); Satyasundar Barik, Odisha repromulgates ordinance on APMCs, Available at: https://www.thehindu.com/news/national/other-states/odisha-repromulgates-ordinance-on-apmcs/article33796206.ece(last visited on Nov. 14, 2021) .

against the central farm laws resulted in a quiet burial of this bill and lapse of these ordinances. The point to be noted is that there was no reason to pass such important and controversial laws through ordinance. The purported justification of 'providing immediate relief to farmers during the pandemic'[81] seems questionable. However, it is heartening that the government was willing to wait before enacting it through the legislature, which given its absolute majority, would have been easy to do.

While the move of allowing the lapse of the ordinances, which demonstrates the willingness of the government to engage with the stakeholders and be open to their feedback, is commendable, this objective could have been better achieved through a pre-legislation consultative process. Promulgating an ordinance, to gauge public opinion, seems to be putting the cart before the horse. The COVID-19 pandemic seems to have contributed to normalising ordinances as a mode of law-making. This is an unfortunate development and does not augur well for the constitutional practices of the state. It is better to develop a practice of consultation and deliberation, rather than assessing public opinion by making ordinances. These executive laws should only be reserved for true emergencies.

Conclusion

In terms of legislative business, in 2020, Odisha appears to have been dominated by pandemic-influenced legislations. Overall, the legislative response to the pandemic was well timed and effective, and enabled the government to prevent it from worsening.

The developments in the industry and labour sectors signal a regulatory withdrawal, signalling the government's belief that improving the ease of doing business will boost the economy and will take care of issues of unemployment. Sadly, this might have had the effect of shifting the burden of the pandemic from industries to the workers. As for other sectors, a trend of centralisation has been observed, for instance, in the amendments made in the Odisha Universities Act.

Further, there are some concerning developments and trends which seem contrary to best legislative practices, such as conducting ordinary legislative business through ordinance making. Normalising ordinance as a pre-enactment step seems unnecessary and contrary to the intention behind the inclusion of this power in the Constitution.

81. Express News Service, "Odisha to bring agriculture ordinance for farmers", The New Indian Express", Nov. 13, 2020, *available at*: https://www.newindianexpress.com/states/odisha/2020/nov/13/odisha-to-bring-agriculture-ordinance-for-farmers-2223068.html (last visited on Nov. 14, 2021) .

Punjab

Subhashini Shriya[1]

Introduction and Background

Legislative activity by the state of Punjab is very pertinent to a study of India's federal experience. The state occupies a unique place in India's economy and politics. It is a border state populated by a religious and linguistic minority with a turbulent political history. It has been the ground for the green revolution and the mainstay of the country's food-grain production. The prosperity of the initial decades of the green revolution has given way to a deep agrarian crisis and inadequate industrial development creating a complex socio-economic field. Although it was among the richest states in the country in the early 2000s, today, the state's per capita income has fallen below the national average.[2] It faces a severe natural resource crunch with declining soil fertility and depletion of ground water. The state also labours under enormous and mounting debt, and was one of the most indebted states in the country in 2020.[3]

The state's first four decades since independence were marked by unstable and short-lived state governments and a history of federal tensions with the centre.[4] This was reflected in the imposition of president's rule on eight occasions, ten long years in total. The main points of tension between the state and the centre include the recognition of specific rights for the Sikh community, state formation on linguistic lines, sharing of water resources and provision of subsidies to farmers. Consecutive state governments have failed to address these issues ailing the state. They have held that the state's woes are being aggravated by union policies, an argument also advanced by the current state government.

Present legislative actions respond to these issues of contestation with the centre. Strengthening non-tax revenue receipts through capitalizing on resources, legislating on water resource management, strengthening the business climate of the state, passing various laws to protect the agricultural sector from reforms and expand opportunities within agriculture are some such attempts taken in the year 2020. The Punjab state-centre relationship was also impacted by actions such as the state assembly passing a resolution by voice vote opposing the Citizenship Amendment Act (CAA), demanding repeal

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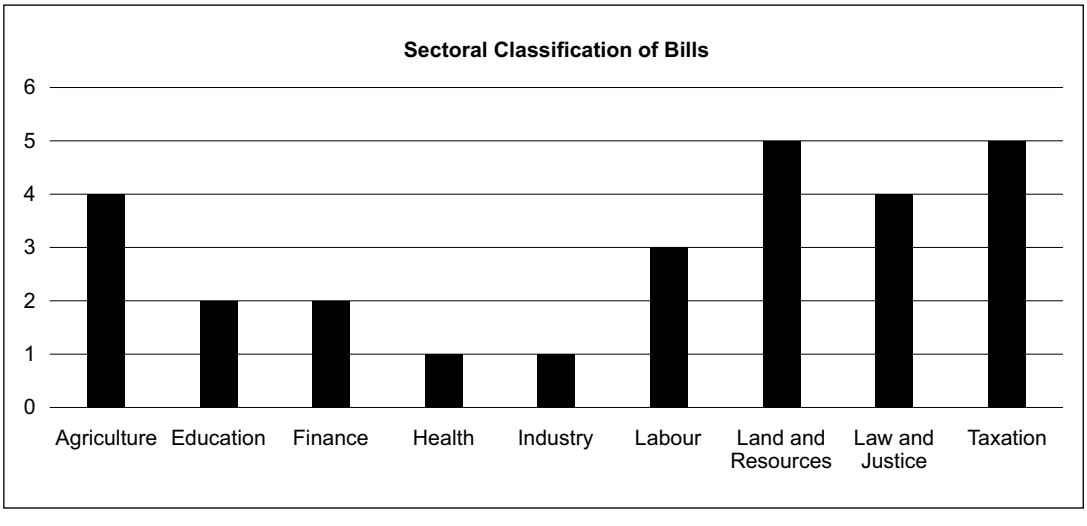
1. Independent Researcher based in Delhi.
   The research assistance of Abhineet Maurya NLU Delhi is gratefully acknowledged.
2. Ruchika M Khanna, "Punjab's per capita income falls to Rs1.15L, lower than national avg" *The Tribune,* Feb. 12, 2021, *available at:* https://www.tribuneindia.com/news/punjab/punjabs-per-capita-income-falls-to-rs1-15l-lower-than-national-avg-211096 (last visited on Feb. 5, 2022).
3. Navneet Sharma, "Punjab's debt pile puffs up" *Hindustan Times,* Feb. 28, 2020, *available at*:https://www.hindustantimes.com/chandigarh/punjab-s-debt-pile-puffs-up/story-fTmg1eJQ7BHbGpcQeYA6CL.html (last visited on Feb. 26, 2022).
4. Manraj Grewal Sharma, "Coalitions, agitations, and President's Rule: A short political history of Punjab" *The Indian Express,* Jan. 11, 2022, *available at:* https://indianexpress.com/article/india/political-pulse/punjab-assembly-elections-a-short-political-history-of-punjab-7716790/ (last visited on March 5, 2022).

of the Act[5] and engaging in a protracted conflict with the centre regarding the use of direct benefit transfer (DBT) for payment of minimum support price (MSP).[6] Punjab also made a notable mark on the federal landscape by leading various opposition-ruled states to challenge the central farm laws through their legislative powers.

Quantitative Review

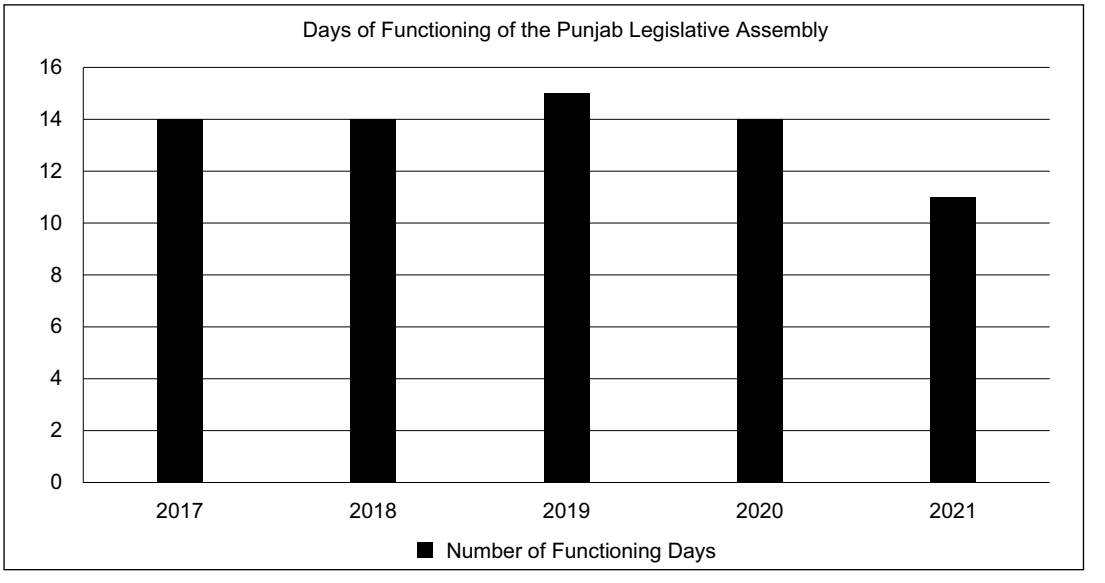
The Punjab legislative assembly passed 27 bills and six ordinances in the year 2020. Among the bills, all but four received the governor's assent and were enacted as laws. The four which could not be enacted included the three state amendments to the central farm laws, and an amendment to the Code of Civil Procedure also having implications for agricultural policy. In terms of the subjects of the bills tabled, five dealt with land and resources, four each with the fields of agriculture, law and justice and taxation. There were three amendments to labour laws, two Acts related to finance, two addressing education and one each related to health and industry. The state did not show any extraordinary reliance on ordinances to take the executive route to legislative activity. The ordinances passed addressed labour, health and law and justice. All ordinances were eventually passed as bills and enacted as laws.

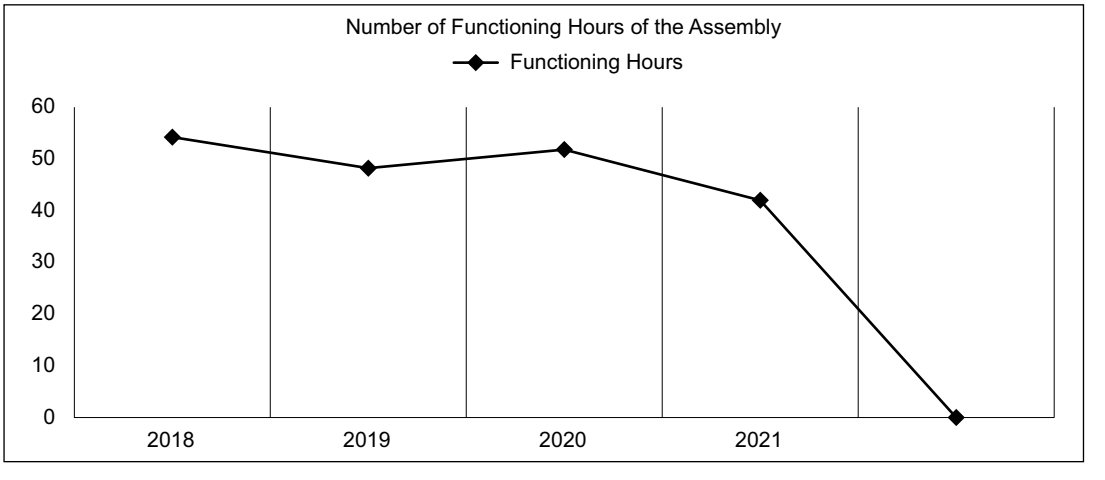


The performance of the Punjab legislative assembly in terms of time spent in legislative activity and time invested in deliberation and debate over legislation has been below average.[7] The Assembly passed all bills on the same day as they were tabled. It sat on 15 days, the same as its average since the present government came into power. This is lower than the average sitting days of 19 major states for

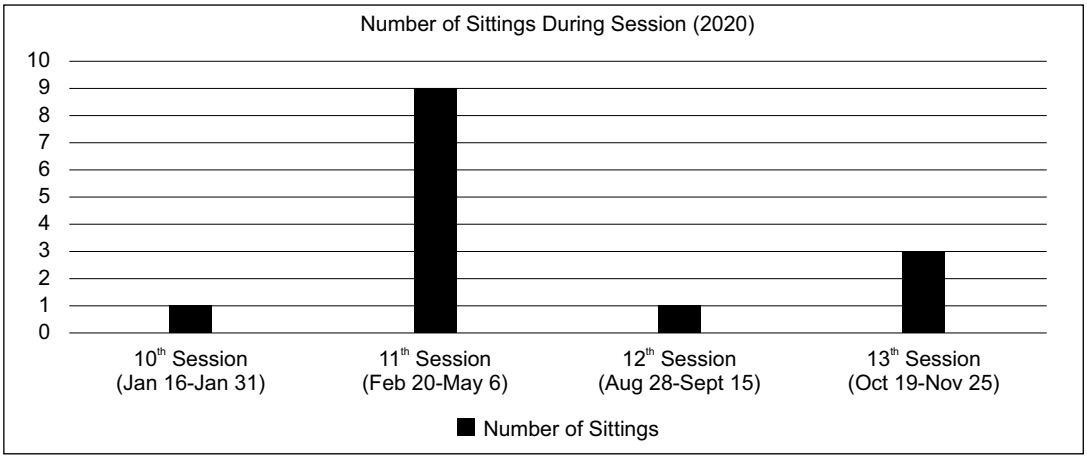
5. PTI, "Punjab Assembly passes resolution against CAA by voice vote" *The Times of India,* Jan. 17, 2020: *available at*: https://timesofindia.indiatimes.com/india/punjab-assembly-moves-resolution-against-caa/articleshow/73326176.cms (last visited on Feb. 25, 2022).
6. This struggle was lost in 2021 after years of negotiation when the centre gave an ultimatum to not procure grains unless the reform was implemented. Kanchan Vasdev, "Punjab gives in, will implement DBT for farmers" *The Indian Express,* April 9, 2021, *available at:* https://indianexpress.com/article/india/punjab-gives-in-will-implement-dbt-for-farmers-7265190/(last visited on Feb. 26, 2022).
7. PRS Legislative Research, "Functioning of the 15th Punjab Assembly (2017-2022)", *available at*: https://prsindia.org/legislatures/states/functioning-of-15th-punjab-assembly-2017-2022 (last visited on Feb. 20, 2022).

which data are available.[8] Similarly, the total number of hours spent by the Assembly in these sittings has remained consistent with its average of 51.8 hours.[9] Analysis of Assembly sessions shows that a majority of the Assembly's work was done in the first few months of the pandemic and the lockdown. The eleventh session, during which the Assembly saw the highest number of sittings (nine), was held from February 20, 2020 to May 6, 2020.[10] In the tenth and the eleventh sessions, there was one sitting each, while the thirteenth and the final session of the year had three sittings.





8. *Ibid.*
9. *Ibid.*
10. Punjab Legislative Assembly, "Assembly Sessions and Sittings from Aug. 2, 2019 to March 10, 2021", *available at:* http://www.punjabassembly.nic.in/images/docs/Sitting%20of%20session%20latest%20one.pdf (last visited on Feb. 20, 2022).



The Punjab legislative assembly also had 16 committees constituted of state MLAs to report to the Assembly on various issues. These included committees on Public Accounts, Agriculture, Panchayati Raj Institutions, Local Bodies and Welfare of Scheduled Castes, Scheduled Tribes, and Backward Class among others.[11]

Qualitative Analysis

Addressing the Fiscal Crisis: Finance, Taxation and Resource Management

Punjab has been facing a severe financial crisis which has grown unabated over a decade. It was among the most indebted Indian states in 2020. Projections suggest that the debt will double by 2024-25.[12] Around 24 percent of its revenue goes into interest payments, while it incurs new debts which again go into debt servicing rather than capital investment and income generation.[13] Experts have attributed the crisis to structural problems in the economy, slow industrial development and faulty state government policies. Revenue mobilisation by the government has been poor and the state was able to collect only 13.98 percent of its non-tax revenue and 48 percent of its own tax revenue in 2019.[14] This is one of the gravest issues facing the state. The legislative activity of the state assembly addresses this crisis in its various dimensions.

Fulfilling Union Recommendations

The Assembly passed the Punjab Fiscal Responsibility and Budget Management (Second Amendment) Act, 2020. The principal Act tries to enforce financial discipline on the government and limit fiscal

11. Punjab Legislative Assembly, Committees, *available at:* http://www.punjabassembly.nic.in/index.php/committies (last visited on March 11, 2022).
12. Vishav Bharti, "Punjab debt to double in five years: CAG", The *Dainik Tribune,* Mar. 05, 2021, *available at*:https://www.tribuneindia.com/news/punjab/punjab-debt-to-double-in-five-years-cag-220568 (last visited on March 13, 2021).
13. Navneet Sharma, "Punjab's debt pile puffs up" *The Hindustan Times,* Feb. 28, 2020 *available at:* https://www.hindustantimes.com/chandigarh/punjab-s-debt-pile-puffs-up/story-fTmg1eJQ7BHbGpcQeYA6CL.html (last visited on Feb. 26, 2022).
14. Sanjeev Verma, "Fiscal crisis is multidimensional, but Punjab's policies poor: Study", *The Times of India,* Nov. 1, 2021, *available at:* https://timesofindia.indiatimes.com/city/chandigarh/fiscal-crisis-is-multidimensional-but-punjabs-policies-poor-study/articleshow/87456016.cms (last visited on Mar. 4, 2021).

deficit to three percent. The amendments give statutory force to guidelines of the Finance Commission on conditions for an additional borrowing space of 1.5 percent in 2020-2021 and three percent in 2021-2022 for state governments. These require the implementation of 'One Nation, One Ration Card' system; 'Ease of Doing Business' reforms; urban-local body/utility reforms and power sector reforms.

States suffered massive loss of revenue in the context of the national lockdown in the wake of the pandemic. At the same time, the centre's refusal to release GST compensation and delays in mandatory tax transfers exacerbated the fiscal strain. The imposition of conditions for increasing states' borrowing limit under such tough conditions has been seen as a serious undermining of the spirit of fiscal federalism.[15] It has been argued that the centre used the fiscal distress of states demanding an increase in the FRMB limit to impose a slew of reforms which had otherwise been meeting resistance at the state level.[16] Punjab is a pertinent example of this situation. Its fiscal crisis makes it extremely dependent on state support and central debt. At the same time power sector reforms accepted by the state under this Act demand an end to power subsidies for farmers, a populist measure on which the state government has been resisting union recommendations for a long time.

Tapping Non-Tax Revenue-Sources

The government has also passed legislations to increase its non-tax revenue mobilisation. It has shown a drive towards optimization of the use of land and infrastructure in urban and rural areas. Several laws in this direction have been passed by the present government on the recommendations of the Revenue Commission established in the state in 2018.[17] These aim at regularising existing land lease practices and enabling greater generation and collection of tax and non-tax revenues by proper disposal and utilisation of government land. At the same time, they also serve other social welfare objectives such as settling land and property rights for various classes of people and improving civic services.

The Punjab Management and Transfer of Municipal Properties Act, 2020 provides for remunerative transfer of municipal property through open e-auctions for commercial properties and drawing of lots for residences. It allows the state to vest proprietary rights in a tenant or occupant of a municipal property if they have occupied a property for more than 12 years. It guards against malpractices by barring transfers to employees of the municipality and the local government, and elected government representatives. Such property can be used as mortgage for loans from government banks but cannot be sold, sub-let or otherwise transferred except through inheritance for a period of 20 years. The law requires a tenant to pay arrears of pending lease rent to the municipality before gaining proprietary rights. This is designed to help the government recover unpaid non-tax dues which form a significant gap in state revenues. The Act specifies the conditions for such transfers and sets up a tribunal for deciding references in connected matters. The Act has been relied upon by municipal corporations in the state to actively mobilize revenues. For example, the Ludhiana Municipal Corporation resolved to generate Rs. 50 crore from sale, rent/lease of municipal properties, besides the e-auction of commercial

15. M.K. Venu, "GST Stalemate: Modi Must Make the Centre Borrow on Behalf of States", *The Wire,* Oct. 7 2020, *available at:* https://thewire.in/economy/gst-council-stalemate-narendra-modi-centre-borrow-states (last visited on March 8, 2022).
16. Prasanta Sahu, "State govt borrowing limit hiked to 5% of GSDP; mostly linked to reform goals", The *Financial Express,* May 18, 2020, *available at:* https://www.financialexpress.com/economy/state-govt-borrowing-limit-hiked-to-5-of-gsdp-mostly-linked-to-reform-goals/1962112/ (last visited on Feb. 28, 2022).
17. Department of Revenue, Rehabilitation and Disaster Management, Government of Punjab, Recommendations of Revenue Commission, *available at:* https://revenue.punjab.gov.in/?q=recommendations-revenue-commission (last visited on March 8, 2022).

properties under the Act in 2021.[18] However, despite all safeguards for transparency incorporated in the Act, charges of corruption have still been leveled at such sales.[19]

The Punjab (Welfare and Settlement of Landless, Marginal and Small Occupant Farmers) Allotment of State Government Land Act, 2020 allots up to five acres of land to landless, marginal and small farmers who have been in cultivating possession of government land for ten years or more at a determined price. The Act also aims to get the government a reasonable price for land owned by it, but not in its possession. It allows differential subsidies according to the social category of the applicant, protecting interests on both sides. This is also expected to settle many pending legislations connected to land in the state.[20]

The Registration (Punjab Amendment) Act 2020 inserts section 19-A(1) into the principal Act. This section prohibits the registration of any instrument relating to transfer of certain categories of immovable property without the sanction of a competent authority. These categories include land belonging to the state, central or local governments, the Bhoodan Yagna Board or the Waqf Board. The prohibition extends to land attached by a competent authority, prohibited for transfer under an Act and *shamalat deh* land unless it has been sold or allocated by the government. The amendment thus seeks to safeguard government property from alienation.

The Punjab Prisons Development Board Act, 2020 seeks to develop the "financial self sufficiency of jails, to strengthen their infrastructure and unlock the commercial potential of jails, enhancement of capacity of factories there and to gain new skills with a view to make them employable on release."[21] Expanding prison industries will also reduce the financial liability on the government. Prison industries in the state garnered Rs. 1.44 crore in 2018[22] and hold significant scope for further expansion. The law also provides for encouraging correctional interventions and welfare of prisoners and prison staff and vocational or skill training of inmates.

Agriculture: A Contested Agenda for Reforms

Challenging the Central Farm Laws

Agriculture is of central significance for Punjab's society, economy and politics. It takes a significant share of credit for both the state's erstwhile 'prosperity' and its present crisis. Three central laws promoting contract farming, allowing agricultural trade outside state agricultural produce markets

18. Harshraj Singh, "Ludhiana Municipal Corporation House meeting: Most resolutions passed without discussion" *The Tribune,* Dec. 29, 2021, *available at:*https://www.tribuneindia.com/news/ludhiana/ludhiana-municipal-corporation-house-meeting-most-resolutions-passed-without-discussion-355812 (last visited on Feb. 27, 2022).
19. Correspondent, "No irregularities in e-auction of commercial site, says Ludhiana Improvement Trust chief" *The Tribune,* Sep. 01, 2021, *available at:* https://www.tribuneindia.com/news/ludhiana/no-irregularities-in-e-auction-of-commercial-site-says-ludhiana-improvement-trust-chief-304878 (last visited on Feb. 27, 2022).
20. Directorate of Information and Public Relations, Punjab, India, Seven key Bills Approved by House During Special Sessions of Punjab Vidhan Sabha, *available at:* http://www.diprpunjab.gov.in/?q=content/seven-key-bills-approved-house-during-special-session-punjab-vidhan-sabha (last visited on Feb. 27, 2022)
21. Express News Service, "To fuel revenue growth, Punjab approves 12 IOCL retail outlets on jail land", *The Indian Express*, April 9, 2021, *available at*: https://indianexpress.com/article/cities/chandigarh/to-fuel-revenue-growth-punjab-approves-12-iocl-retail-outlets-on-jail-land-7265152/ (last visited on Feb. 28, 2022)
22. National Crime Records Bureau, "Prison Statistics India, 2019" 2010 (2020) *available at:* https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf (last visited on Feb. 28, 2022).

and restricting state regulation of agricultural production and sale made agricultural policy one of the most hotly debated legislative issues between the centre and states in 2020. The central laws were opposed by massive public mobilisation especially in Punjab. This built popular pressure on the state government to exercise its legislative powers contra the centre. Agriculture and agricultural markets fall under the state list under entries 14, 18 and 28; while production, supply and distribution of goods come under entry 27 of list II read with entry 33 of list III. Article 254(2) of the Constitution allows states to pass legislations negating central Acts on concurrent subjects. Such laws require the assent of the president to come into force. Punjab was the first state to use these provisions to pass amendments negating the central farm laws. This set in motion similar legislative initiatives in other state assemblies. However, none of the state laws amending the central farm laws received the president's assent.[23]

The state amendments primarily counter those provisions of the central laws which were challenged most strongly in the farmer's agitation. This shows responsiveness to public opinion as a major motive force behind the passage of the state farm laws. It also reflects how the division of legislative powers between the centre and the state can provide avenues for public opinion to impact legislative activity in a federal system.

The Essential Commodities (Special Provisions and Punjab Amendment) Bill, 2020 gives the state government concomitant powers for "regulating or prohibiting the production, supply, distribution" of agricultural produce and "imposing stock limits under extraordinary circumstances."[24] A special provision for the state of Punjab maintains the status quo as on June 4, 2020 with respect to the Punjab Agricultural Produce Markets Act, 1961. It suspends all notices issued, and stays all action taken under the central Act. The introduction to the Bill makes a direct criticism of the central Act. It states that "the onus lies upon the state Government to protect consumers." This is a notable assertion of legislative responsibility incumbent on states by virtue of the federal division of legislative powers.

The Farmers (Empowerment and Protection Agreement of Price Assurance and Farm Services (Special Provisions and Punjab Amendment) Bill, 2020 amends the central Act which proposed a barrier-free intra-state and inter-state trade in agricultural produce, requiring no license and attracting no special tax or levy from states, overriding the state APMC Acts. The Punjab assembly amended the law arguing that the mechanism introduced by it "is vulnerable to encroachment and manipulation by vested corporate interests" and that as 86.2% farmers in the state own less than five acres of land, majority owning less than two acres they suffer an "inherent handicap of bargaining power to negotiate fair-price contracts hence requiring proper protection by the State Government."[25] The Punjab amendment guarantees a MSP for wheat and paddy and provides for farmers to also approach the civil court or avail remedies under other laws in case of breach of contract. It introduces punishment for compelling or exerting pressure on a farmer or agro-producer to enter into a contract or sell below the MSP with imprisonment not less than three years and fine. It saves the provisions of the Punjab Agricultural Produce Markets Act, 1961 and allows the state government to levy a fee on corporate traders and/or electronic trading platforms trading

23. The relevance of these laws has diminished with the repeal of the central farm laws, but they remain important for understanding the dynamic of state-center legislative powers.
24. The Essential Commodities (Special Provisions and Punjab Amendment) Bill, 2020 (Bill 34 of 2020), *available at*: https://prsindia.org/files/bills_acts/bills_states/punjab/2020/Essential%20Commodities%20PB%20amendment.pdf (last visited on April 18, 2022).
25. The Farmers (Empowerment and Protection Agreement of Price Assurance and Farm Services (Special Provisions and Punjab Amendment) Bill, 2020 (Bill 33 of 2020), *available at*: https://prsindia.org/files/bills_acts/bills_states/punjab/2020/Agreement%20on%20Price%20Assurance%20PB%20amendment.pdf (last visited on April 18, 2022).

in areas outside APMCs. Such a fee is earmarked for the welfare of small and marginal farmers. This Act too suspends all notices and actions under the central laws.

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) (Special Provisions and Punjab Amendment) Bill, 2020 states that the central Act would nullify the existing MSP mechanism and counteracts the same by not permitting sale or purchase of wheat and paddy under MSP. It also provides punishment for compelling farmers to enter into contracts violating MSP. It levies a fee on agricultural trade for the state government.

Utilisation of Government Land

Besides amendments to the central farm laws, the legislature of Punjab has also been reviewing and extending its legislative framework to address the agricultural crisis in the state. Two of these, the Punjab Land Revenue (Amendment) Act, 2020 and the Code of Civil Procedure (Punjab Amendment) Bill, 2020 have been informed by recommendations of the Revenue Commission and seek to settle land ownership and related disputes.

The Punjab Land Revenue (Amendment) Act, 2020 amends the principal Act to reduce the limitation period for appeals before the collector and the commissioner and set a limit of 60 days for the appellate authority to decide on an appeal. It removes the authority of the collector and commissioner over revising the order of a revenue officer and sets a limitation period of 90 days for the financial commissioner to make such revision. It includes SMS and Whatsapp messages as legitimate ways for serving summons. It makes an attempt at mediation and reconciliation compulsory before initiating partition proceedings. It sets a limitation of 60 days for the preparation of an instrument of partition after passing of an order and provides for it to come into effect in 30 days after being issued.

The Code of Civil Procedure (Punjab Amendment) Bill, 2020 amends the CPC to exempt land up to two and a half acres belonging to a farmer from attachment and sale in an execution of decree. Auctioning of mortgaged agricultural land by cooperative societies had already been abolished in the state in 2017.[26] The protection has now been extended to all sources of credit. The largest section of farmers in the state operates small and marginal landholdings. Consequently, the amendment will protect the entire land holding of a major portion of farmers in the state.[27] This is an important protection in public interest as marginal and small farmers in Punjab bear a per capita debt of Rs. 276,000 and Rs. 557,000 each respectively and face a high risk of losing their land as collateral.[28] The attachment of farmers' lands by banks/money lenders/ arthiyas has been a major issue in the state. Struggles on the issue have taken place in Bhatinda, Mansa, Moga, Sangrur, Faridkot and Patiala in the recent past.[29] The amendment will limit the land available as collateral for debt. This will also be a major "stumbling block" for the implementation of financial contracts with farmers and institutionalisation of contract

26. Anju Agnihotri Chaba, "Explained: Why kurki ban on farm land is not working in Punjab villages", *The Indian Express,* Aug. 17, 2019, *available at:* https://indianexpress.com/article/explained/explained-why-kurki-ban-on-farm-land-is-not-working-in-punjab-villages-5912156/ (last visited on Feb. 26, 2022).
27. R Srinivas, "From competitive to combative federalism", *Business Line,* Oct 28. 2020, *available at:* https://www.thehindubusinessline.com/opinion/columns/r-srinivasan/from-competitive-to-combative-federalism/article32965384.ece (last visited on Feb. 26, 2022).
28. Parikshit Goyal, "Why Punjab stands to lose from farmers' produce trade and commerce ordinance", *Down to Earth,* Jun. 30, 2020, *available at:* https://www.downtoearth.org.in/blog/economy/why-punjab-stands-to-lose-from-farmers-produce-trade-and-commerce-ordinance-72040 (last visited on Feb. 26, 2020).
29. *Supra* note 26.

farming as anticipated by the central farm laws. To this extent it has provided an alternative legislative route to counter the central farm laws.

Extending the Legislative Framework for Agriculture

The Punjab Tissue Culture Based Seed Potato Act, 2020 provides for the setting up of a Tissue Culture Based Seed Potato Committee. It sets standards for certification of potato seeds and puts in place methods of ensuring accountability of seed origin and quality. Punishment for violation of the Act ranges from fine, imprisonment to cancellation of license and blacklisting of the defaulter. Punjab has become one of the first states to approve rules for tissue culture-based certification. The law aims to develop the state as an export hub of seed potatoes in the country. It seeks to find new avenues for the development of farming incomes in Punjab. It will also promote diversification of cropping pattern which is a crucial concern for agriculture in the state.

Labour and Industry

Labour

The Punjab assembly amended three major labour laws in 2020. Several other states in the country also introduced very similar amendments. It has been suggested that these state amendments could likely be in pursuance of Union recommendations.[30] It can be argued that unlike the reforms in agriculture, reforms in labour laws reveal a greater convergence of approach between the Union and the Punjab state government.

The amendments significantly narrow the area of operation of the laws by excluding smaller industries from their ambit. In the Contract Labour (Regulation and Abolition) (Punjab Amendment) Act, 2020, the threshold for application of the principal Act has been increased from 20 to 50 workers. In the Factories (Punjab Amendment) Act, 2020 the definition of factory has changed to only include those power-based units which employ 20 or more workers as opposed to the earlier benchmark of employing ten or more workers. For non-power-based units, the employment threshold has been increased from 20 workers to 40 workers. The Industrial Disputes (Punjab Amendment) Act, 2020 changes the general criterion for applicability of the principal Act from 100 workers to 300 workers. It gives the state government the discretion to relax this criterion for an establishment holding less than 300 but more than 100 workers for the maintenance of industrial peace or prevention of victimisation of workers. Such changes have significant implications for a state like Punjab which has more than two lakh small scale enterprises, with an average workforce of 7.4 workers per unit. Compared to this, the state only has 504 large industrial units.[31] The shift in criterion of application will therefore take most of the state's industrial sector outside the purview of labour laws.

The Factories (Punjab Amendment) Act, 2020 also increases the cap on overtime from 75 hours to 115 hours. This follows an earlier notification by the state, permitting a 12-hour working day with

30. Somesh Jha, "Centre passes the baton on to States for initiating labour law reforms", *The Business Standard,* May 20, 2020, *available at:* https://www.business-standard.com/article/economy-policy/centre-passes-the-baton-on-to-states-for-initiating-labour-law-reforms-120052001439_1.html (last visited on Feb. 28, 2022).

31. Economic and Statistical Organisation, "2019-2020 Economic Survey" 84 (Government of Punjab, 2020) *available at:* https://esopb.gov.in/static/PDF/EconomicSurvey-2019-20.pdf (last visited on Feb. 28, 2022).

payment of overtime wages for three months in light of the pandemic.[32] The amendment allows for compounding of offences punishable only with fine and committed for the first time, further reducing the liability of the employer.

The Industrial Disputes (Punjab Amendment) Act, 2020 makes it mandatory for an industrial dispute arising out of discharge, dismissal, retrenchment or any other mode of termination of services of an individual workman to be first raised in a conciliation proceeding within three years from the date of such termination. Such cases were earlier automatically treated equivalent to the reference of an industrial dispute. The amendment therefore further restricts workers' access to judicial proceedings. It also omits the provision of payment of three months wages in lieu of notice for retrenchment. Instead, it provides for payment of three months of average pay during retrenchment and closing down of an establishment in addition to the given compensation.

Ease of Doing Business

The stagnation of agricultural incomes has made industrial development a crucial concern for Punjab. The state claims to have implemented all 187 of 187 Ease of Doing Business (EDB) reforms[33] applicable to it. Despite these changes, the state still stood at 19 in the EDB ranking[34] released in 2020.

The Punjab Right to Business Act, 2020 allows new MSMEs to be set up without any prior clearance based on self-certification. The law provides for the establishment of a District Bureau of Enterprise in each district to facilitate and promote MSMEs and redress their grievances. It relaxes the requirement of approvals under various state Acts by introducing the Certificate of In Principle Approvals on the basis of a Declaration of Intent by an enterprise. This certificate shall be granted to an MSME within three to fifteen days of application. This certificate remains valid for three years and six months, during which regular approvals can be obtained. The inspection of newly registered MSMEs have been restricted under the Act, instead protection is given to enterprises from being inspected or compelled to submit documents. 1.40 lakh MSMEs were enrolled in the state from July 2020 to July 2021.[35]

The assembly also passed the Punjab State Vigilance Commission Act, 2020 with the objective of improving transparency in governance. The Act establishes the Punjab State Vigilance Commission to inquire into allegations brought under the Prevention of Corruption Act, 1988. Public servants of the state government, state corporations established under any state Act, government companies, public sector undertakings, commissions, tribunals and universities can be scrutinized under the Act. The commission shall control and direct the vigilance and police establishment in cases under the Prevention of Corruption Act, 1988 or against above-mentioned public servants. Punjab is counted among the most corrupt states in the country. With such a reputation, a legal mechanism for zero bureaucratic and political corruption is an important measure to encourage investment in the state.

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32. Department of Labour, Government of Punjab, Notification, April 20, 2020, *available at:* https://prsindia.org/files/bills_acts/bills_states/punjab/2020/Changes%20in%20work%20hours%20-%20Punjab.pdf (last visited on Feb. 26, 2022).
33. Navneet Sharma, "Uneasy over low rank in 'ease of doing business', Punjab writes to Centre", *The Hindustan Times,* Sep. 21, 2020, *available at:* https://www.hindustantimes.com/cities/uneasy-over-low-rank-in-ease-of-doing-business-punjab-writes-to-centre/story-5jJKuSSfvr3dfKpb0bVIgI.html (last visited on Feb. 28, 2022).
34. Reserve Bank of India, "Handbook of Statistics on Indian States" 307 (2021).
35. Sanjeev Verma, "1.40 lakh MSMEs enrolled in Punjab, 1.47 lakh in Haryana since July 2020: Center", *The Times of India,* July 23, 2021, *available at:* https://timesofindia.indiatimes.com/city/chandigarh/1-40-lakh-msmes-enrolled-in-punjab-1-47-lakh-in-haryana-since-july-2020-centre/articleshow/84670547.cms (last visited on Feb. 28, 2022).

Legislating on Social Welfare: Land Rights, Health and Education

Land Rights

Settlement of land rights has been a major thrust of the state government's welfare measures. The Punjab Slum Dwellers (Proprietary Rights) Act, 2020 entitles every slum dweller occupying land in various slum areas of the state to be given proprietary right to land up to 30–60 sq mt depending on the location of the slum. The Act provides for free of cost allotment for EWS occupants and differential amounts depending on the social category of the occupants. The allotted land will be inheritable and usable for mortgage, though not transferrable through sub-lease, sale and gift for 30 years. It requires proprietary rights to be issued jointly in the name of both spouses which is an important measure for extending property rights to women. Civic amenities for slums, rehabilitation of slum dwellers where sites of slum settlements are deemed untenable, in-situ redevelopment of slum areas, and provision of transit space for displaced slum dwellers have also been provided for. The Slum Area Redevelopment and Rehabilitation Committee is the authority designated for determination of connected matters. The implementation of the Act has been supported by administrative initiatives such as the 'BASERA – the chief minister's slum development programme.'

The Punjab Bhondedar, Butemar, Dohlidar, Insar Miadi, Mukarraridar, Mundhimar, Panahi Qadeem, Saunjidar, or Taraddadkar (Vesting of Proprietary Rights) Act, 2020 gives proprietary rights to individuals recorded as Bhondedar, Butemar, Dohlidar, Insar Miadi, Mukarraridar, Mundhimar, Panahi Qadeem, Saunjidar, or Taraddadkar in revenue records. Beneficiaries or their predecessors are required to have been in occupation of agrarian land (excluding panchayat or shamalat land) for over 20 years to be covered under this Act. Occupants can apply for investiture of proprietary rights before the collector. The rationale behind the law is to address land rights of communities left out of earlier reforms. Punjab had previously granted land rights to tenant cultivators under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 and the PEPSU Occupancy Tenants (Vesting of Proprietary Rights) Act 1954. The Act provides for the previous owner to get compensation for the land given to the tenant by filing an application within two years of such transfer of rights. 11,231 beneficiaries occupying 4000 acres of land have been identified under the Act.[36]

Education

The Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Amendment Act 2020 amends the principal Act of 2006 to broaden the definition of a "private health sciences institution" to include universities. The Act gives overriding effect to clauses of the principal Act which empower the state government to determine fees and reservations in all such institutions. With this amendment private medical universities too will be bound by the state sanctioned fee structure and reservation requirement. The amendment was brought in response to a ruling by the high court where private health sciences universities were excluded from the purview of state regulation under the principal Act.[37]

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36. PTI "Punjab govt gives land rights to slum dwellers, small land tillers" *Devdiscourse,* Oct. 14, 2020, *available at:* https://www.devdiscourse.com/article/science-environment/1261382-punjab-govt-gives-land-rights-to-slum-dwellers-small-land-tillers (last visited on Feb. 27, 2022).
37. Express News Service, "Punjab tweaks law to regulate fee at private health science universities", *The Indian Express*, Oct. 25, 2019, *available at:* https://indianexpress.com/article/cities/chandigarh/punjab-tweaks-law-to-regulate-fee-at-private-health-science-universities-6087124/ (last visited on Feb. 24, 2022).

The effectiveness and intent of the Act as a social welfare measure is questionable given that Punjab is one of the most expensive states for gaining medical education in the country.[38] It has seen a 479 percent hike in fees charged by state-run colleges since the principal Act to regulate private health sciences institutions was enacted. In fact, the fee for MBBS courses in state run colleges increased by 78 percent in the same month as the notification of the ordinance introducing the present amendment. High fees act as a detriment for making medical science institutions accessible for students from marginalised backgrounds partly defeating the purpose of enforcing reservations. Lastly, Punjab faces 20 percent vacancies on posts of medical officers and has a physician density lower than the country's average at 0.83 doctors per 1000 people which also points to the lack of accessible medical education in the state.

The legislature also established a new state university of law through the Sri Guru Teg Bahadur State University of Law, Punjab Act, 2020. The institution shall be head quartered in Tarn-Taran and will be the thirteenth state university in Punjab.

Health

The Punjab Clinical Establishments (Registration and Regulation) Act, 2020 brings private health care under state regulation. The Act establishes a Punjab State Council for clinical establishments to register medical establishments with 50 or more beds. The Act plugs an important regulatory void in the state where no mechanism for prescribing minimum standards for clinical establishments has existed so far. It also requires private clinical establishments to support the state during times of natural disasters and pandemics. It was first introduced in Punjab as an ordinance to enlist the private health sector in the state's fight against the pandemic. The Act was met with widespread protests by doctors.[39] This led to the government excluding health facilities owned by individual doctors from the Act's purview. It was also assured that the Council will be headed by an expert professional and not by a bureaucrat to allay the private sector's misgivings about undue state intervention.

The Act is an interesting example of the possibilities and limitations of the Indian federal system. Public health and hospitals constitute entry 6 in list II of the seventh schedule. While it is clear that public health concerns vary widely according to region, it has often been found that states do not have the capacity to address serious health crises on their own. This has created a lacuna that becomes starkest in conditions such as the COVID-19 pandemic. The gap is remedied to an extent by articles 249, 250 and article 252 (1) of the Constitution. The Clinical Establishments (Registration & Regulation) Act, 2010 was enacted under article 252(1) when Arunachal Pradesh, Sikkim, Himachal Pradesh and Mizoram agreed to a central law for government regulation of the private healthcare sector.[40] Yet, only 17 states and UTs have adopted the law so far and implementation remains nil even within these states.[41] Despite

38. Vivek Gupta, "Expensive Medical Education is Leaving Punjab Short of Doctors", *The India Spend*, Aug. 19, 2020, *available at:* https://www.indiaspend.com/expensive-medical-education-is-leaving-punjab-short-of-doctors/ (last visited on Feb. 25, 2022).
39. Ravinder Vasudeva, "Punjab: 50-beded hospitals owned by docs out of Clinical Establishments Act", *The Hindustan Times,* July 12, 2020, *available at:* https://www.hindustantimes.com/cities/punjab-50-beded-hospitals-owned-by-docs-out-of-clinical-establishments-act/story-rETK0javZ8kFTjFiMZvjvN.html (last visited on Feb. 28, 2022).
40. Ministry of Health and Family Welfare, "Frequently Asked Questions", *available at:* http://clinicalestablishments.gov.in/WriteReadData/847.pdf (last visited on Feb. 27, 2022).
41. Express News Service "Supreme Court notice to govt on plea for affordable healthcare for all", *The Indian Express,* July 28, 2021, *available at*:https://indianexpress.com/article/india/supreme-court-notice-to-govt-on-plea-for-affordable-healthcare-for-all-7425673/ (last visited on March 10, 2022).

the extreme pressures put on the health infrastructure of the country during the pandemic, Punjab was one of the few states which used the law to tap into the resources of the private health sector.

The state also passed the Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2020 to allow temporary release of prisoners beyond the maximum period of 16 weeks a year under conditions of emergencies, natural disasters and epidemics to manage prison population during the pandemic.

Managing Water Resources: The backend of the river water sharing dispute

Dealing with water resource-scarcity is necessary for sustaining the state's agricultural production. The state has had a long-standing contestation with neighbouring states over sharing river water. This has been a point of disaffection between the state and centre since the trifurcation of the state in 1966.[42] The tension has been exacerbated by the depleting level of ground water and the need for alternative sources of irrigation in the state. The state has been demanding riparian rights over its river waters from the center. The first tenure of Amrinder Singh terminated the water sharing pact with neighbouring states.[43] In his recent stint the CM stated that the state does not have water to share and the government shall work to protect the water rights of the state and the livelihoods of its farmers and farm labourers. The subject is important with regard to state-centre relations as exemplifying the difficulties of sharing a vital resource between states. It also underlines the pitfalls of adopting a developmental policy such as the green revolution which entailed very specific resource costs for states like Punjab.

The Punjab Water Resources (Management and Regulation) Act, 2020 establishes the Punjab Water Regulation and Development Authority, the Punjab State Council for Water Management and Development and the Punjab Water Regulation and Development Authority Fund for the regulation, management, conservation and the judicious, equitable and sustainable utilisation of water bodies in the state. It directs the government to prepare an integrated state-water plan. It restricts and monitors the extraction and renewal of ground water as three fourth of the area under cultivation in the state is dependent on sub soil water.[44] The Act stipulates a punishment for any individual or company violating its provisions. Its implementation has been supplemented by administrative projects such as "Pani Bachao, Paisa Kamao" to incentivise water conservation.

Conclusion

Taking a comprehensive view of the state's legislative activity reveals the various push and pull factors determining the exercise of state legislative powers. State-centre relations is one of these factors. They can have a particularly important role in a state like Punjab with its deep integration yet many contestations with the union. The Punjab assembly has been responsive to public opinion. It has also exhibited a commendable degree of innovativeness in adapting its objective of strengthening revenue generation

42. Pritam Singh, *Federalism, Nationalism and Development: India and the Punjab Economy*, 33 (Routledge Contemporary South Asia Series, Routledge Oxon, 2008).
43. PTI, "Amarinder Singh: The man who put Congress back on saddle in Punjab", *The Business Standard,* Sep. 18, 2021, *available at:* https://www.business-standard.com/article/politics/amarinder-singh-the-man-who-put-congress-back-on-saddle-in-punjab-121091800738_1.html (last visited on Feb. 25, 2022).
44. Gurpreet Singh Nibber, "Punjab water regulatory body to oversee installation of new tubewells", *Hindustan Times,* July 13, 2020, *available at:* https://www.hindustantimes.com/chandigarh/punjab-water-regulatory-body-to-oversee-installation-of-new-tubewells/story-0yeWlmX5eLOyuDlALpR3GL.html (last visited on Feb. 26, 2022).

to parallel goals of social welfare and management of resources. The positive role of special bodies such as the Revenue Commission coupled with a willingness of the Assembly to accept its recommendations appear to have been instrumental to this end. Punjab has been significantly dependent on the centre and at the same time has sought to assert the legislative autonomy provided to it by the Constitution. This experience reflects how state legislative powers can be a strong vehicle to represent, and to some extent safeguard, the interests of a state constituency where they diverge from the articulation of the union. However, as emerging from the qualitative analysis, less socially powerful sections of the population such as workers of MSMEs are not seen to exert a similar pull on the state's legislative prerogative and could be easily divested of labour law protections. On the other hand, conflicts of interest between the state and the centre appear at its sharpest when dealing with policies affecting locally powerful sections such as the farming population in Punjab.

RAJASTHAN

Subhashini Shriya[1]

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.[2] 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

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[3] 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.

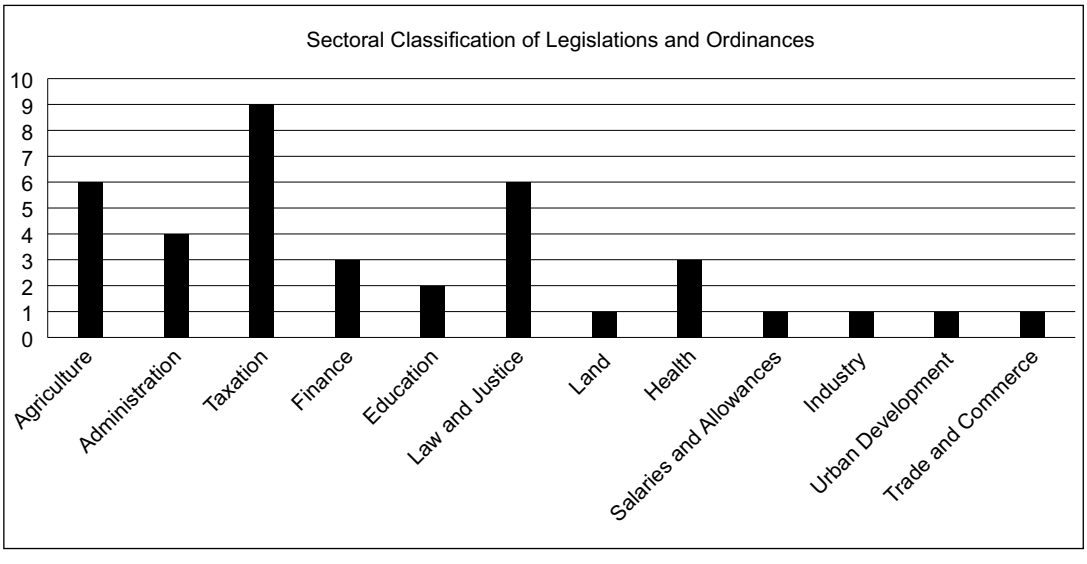

Figure 1: Sectoral Classification of Legislations and Ordinances

On other parameters of legislative functioning, the Rajasthan legislature met for 29 days,[4] 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, a*vailable 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.[5] Fourteen of the bills were passed in the absence of the opposition as it walked out of the session.[6][7]

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.[8] 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

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,[9] 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.[10] 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.[11] 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

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-casuality-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 disbursal 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 Aadhar 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-Aadhar 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.[12]

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)."[13] 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.uscirf.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,[14] with a combined strength of over 1.8 lakh students.[15] 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.[16]

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.[17] 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.[18]

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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* (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/Madarasa_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.[19] 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.[20] 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.[21]

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 a*t: 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.[22]

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 famers and the landless rural population, which is a significant overturning of a long-standing though unaccomplished demand for equitable land reforms in the country.[23]

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,[24] 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.[25] 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.[26] 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.[27]

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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, a*vailable 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.[28] 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 rechannelling 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 latter 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.[29]

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

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.[30] 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.

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).

TAMIL NADU

Rohan K George[1]

Introduction

The year 2020 marked the least number of functioning days and functioning hours of the Tamil Nadu legislative assembly (the TNLA). This in itself was not surprising. The advent of the COVID-19 pandemic had affected the sittings of the TNLA as they affected all other aspects of routine life. However, what was surprising was that the limited number of functioning days did not to a great extent hinder the legislative functioning of the TNLA. In 2020, the TNLA passed 47 bills, on par with its records for the previous years. Interestingly, in a year which presented the best case for executive law-making through ordinances, the number of ordinances passed in Tamil Nadu was surprisingly, less than 13.

Methodology

For the purposes of this study, an analysis of publicly available government databases was conducted. The legislations, ordinances, government notifications and orders of Tamil Nādu in 2020 were accessed through its gazette publications.[2] While a comprehensive analysis of legislations and ordinances was undertaken, notifications, government orders, rules and regulations have been analysed on a representative basis. Where there was a lacuna in terms of availability of certain legislations or ordinances, the resources of PRS Legislative Research (PRS) were utilised. All information regarding sittings of the TNLA was obtained from the website of the Tamil Nadu legislative assembly.[3]

Sittings of the TNLA

The fifteenth TNLA was constituted on May 21, 2016 and was dissolved on May 3, 2021. The year 2020 marked the least number of functioning days and functioning hours of the Assembly. The number of functioning days in 2020 was 23 as compared to 35 in 2016, 37 in 2017, 33 in 2018 and 27 in 2019. The total number of functioning hours was also considerably less than in the previous years, as it functioned for 117 hours approximately in 2020. In comparison, the Assembly functioned for 199 hours approximately in 2017. However, this did not affect the legislative functioning of the Assembly to any great extent.

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1. Partner, Samvad Partners, Chennai. The research assistance of Adil Zawahir from School of Law, Christ University and JS Kaushalya from Tamil Nadu National Law University is gratefully acknowledged.

2. Government of Tamil Nadu, Gazette Publications-2020, *available at*: http://www.stationeryprinting.tn.gov.in/gazette/gazette_list2020.php (last visited on April 15, 2022); Government of Tamil Nadu, Extraordinary Gazette Publications - 2020, *available at*: http://www.stationeryprinting.tn.gov.in/extraordinary/extraord_list2020.php (last visited on April 15, 2022).

3. Tamil Nadu Legislative Assembly, Archives of the 15th Assembly, *available at:* https://www.assembly.tn.gov.in/archive/15th_2016/15th_assly_sessions.php (last visited on March 14, 2022).

A total of ten sessions, six governor's addresses and six budget sessions took place. In 2020, the eighth and ninth session took place which consisted of four meetings ranging about 23 days in total.

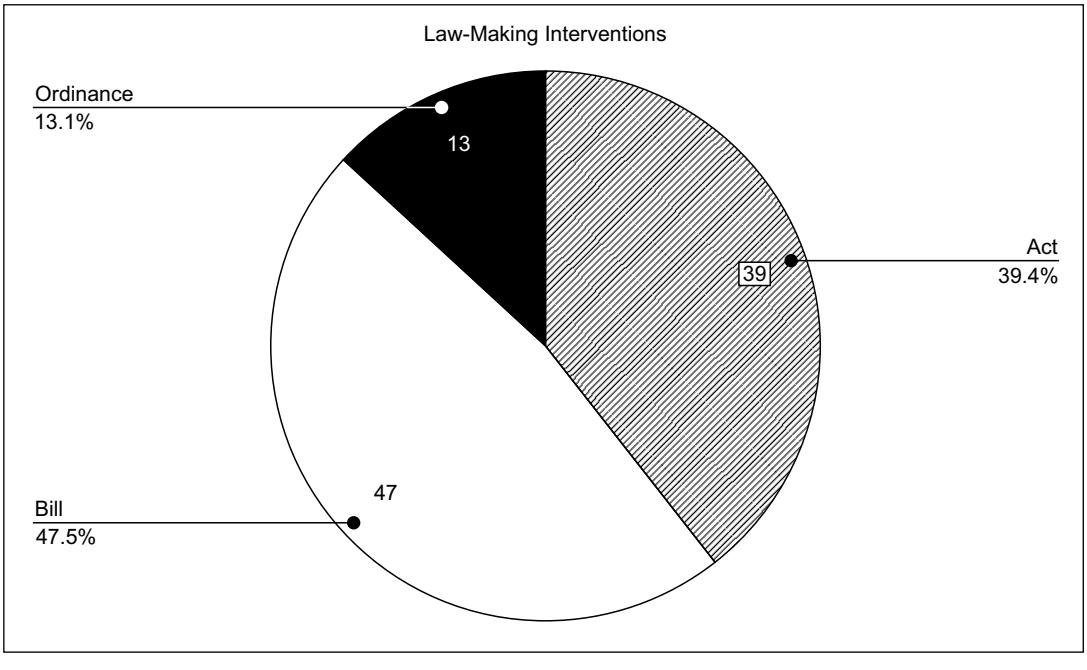
During its eighth session, the TNLA sat for 20 days. During its ninth session, it sat for three days.

Information about Bills, Acts and Ordinances

Despite the circumstances of the COVID-19 pandemic, the TNLA passed 47 bills in 2020, which is on par with those in the previous years. Along with the 47 bills passed, 39 Acts were finalized and 13 ordinances were promulgated in 2020. The use of ordinances in Tamil Nadu in 2020 was surprisingly low. With 13 ordinances, the bills to ordinances ratio for 2020 stood at 3.61.

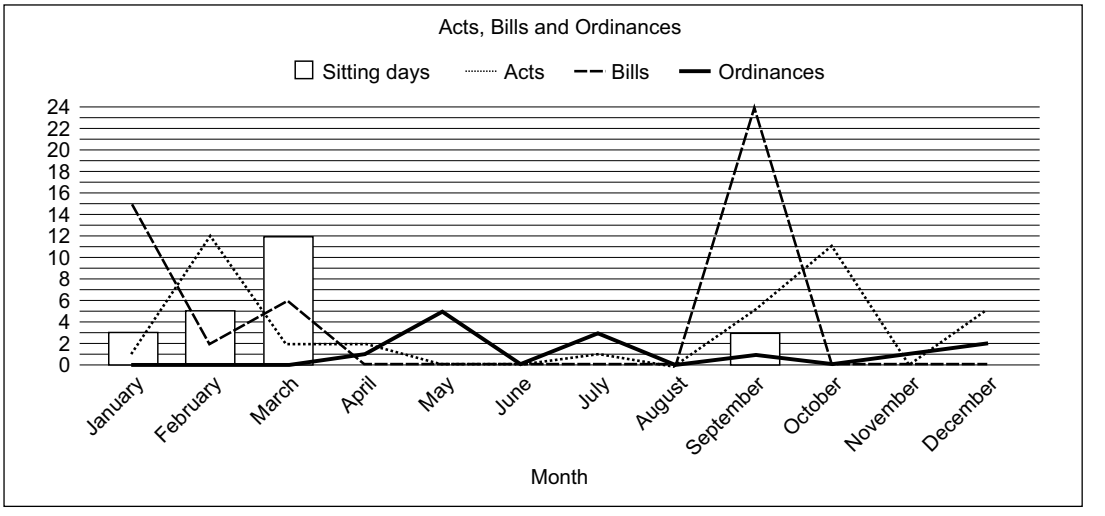
Types of Legislations Passed in 2020

The pie-chart herein represents the various types of legislations passed by the government of Tamil Nadu in the year 2020. Of the 47 bills introduced, 39 were converted into Acts. Thirteen ordinances were also promulgated during this year.



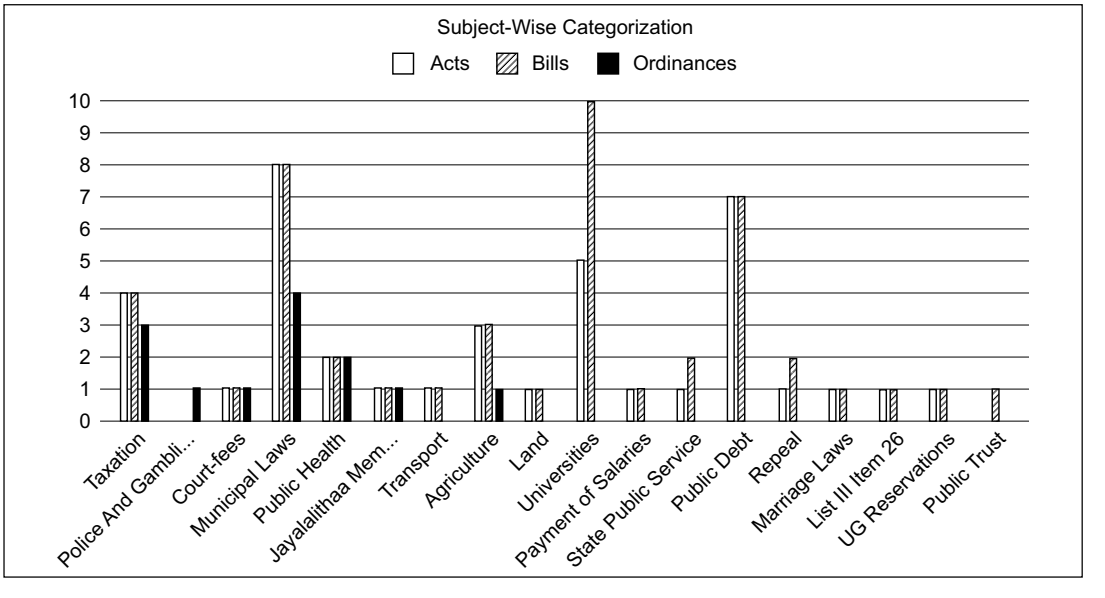
Timeline of Legislations Passed

The following graph represents the number of days the TNLA was in session in 2020 contrasted against the number of types of legislations passed by the sitting legislature. The largest number of bills was passed in September, shortly after lockdown relaxations in 2020. The least number of bills was passed from April to August. Acts were enacted mostly in February and October whereas nine out of the 13 ordinances were promulgated in April, May and July, which is incidentally the time period immediately after the pandemic struck the country.



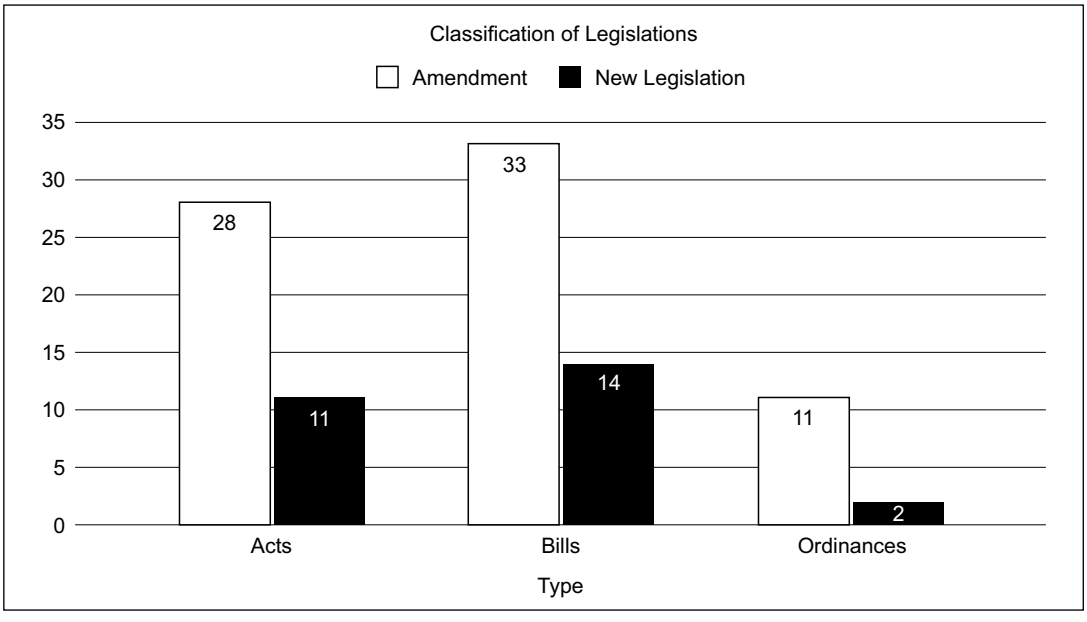
Subject-Wise Categorization

The column graph below represents the various subjects the Tamil Nadu government passed new laws or amended existing legislations upon. This classification has been done based on subjects under schedule 7 of the Constitution of India. Upon analysis it was noticed that some subjects under list II were legislated upon more than the others. Thirteen entries of the available 66 from the state list were used. Five entries of the available 47 from the concurrent list were used. One item from the union list was also interestingly used to legislate upon admission to undergraduate courses in medicine on preferential basis. Municipal laws were given a lot of attention during this year with eight Acts and four ordinances being passed to the effect. Public debt and agriculture also stand out in terms of the number of legislations under list II. Education was the key focus under list III. Despite the pandemic affecting the entire country drastically, it is interesting to note that the legislative assembly passed a mere two Acts and two ordinances in relation to it.



Amendments versus New Enactments

The comparative graph below represents the nature of the legislation passed in terms of whether such legislations constituted amendments or new laws. Fourteen new bills, converted into 11 new Acts, were passed in 2020. Two ordinances were passed to create new legislations, both of which were enacted as new legislations in the Assembly. Of the 47 bills, 33 were amendment bills. This ratio was similar for the Acts enacted as 28 of the 39 Acts notified were amendments. 11 ordinances were also issued to amend existing laws.



May Ordinances

In 2020, the pandemic brought the entire country, as well as the world, to a standstill. A nationwide lockdown was imposed which also brought the legislative assemblies of various states to a standstill. Tamil Nadu was no different. In the absence of a sitting legislative assembly, there was an urgent need for ordinances to be promulgated. With this background, six ordinances were promulgated between April 25, 2020 and May 29, 2020. At least three of these, namely the Public Health (Amendment) Ordinance,[4] The Goods and Services Tax (Amendment) Ordinance[5] and The Taxation Laws (Relaxation of Certain Provisions) Ordinance,[6] were issued citing COVID-19 to be the immediate reason. There was immense financial stress on the nation which required the latter two ordinances to be issued in order to grant extensions of time considering the special circumstances. The Public Health Ordinance was the need of the hour due to the public creating an obstruction to the cremation and burial of those who had died due to the pandemic.

4. Tamil Nadu Ordinance 1 of 2020.
5. Tamil Nadu Ordinance 4 of 2020.
6. Tamil Nadu Ordinance 5 of 2020.

Laws Categorised Thematically

Public Health

The initial responses to the COVID-19 crisis in Tamil Nadu were, by necessity, through the form of rulemaking, notifications and ordinances. On March 13, the governor declared COVID-19 to be a notified disease in Tamil Nadu, under the Tamil Nadu Public Health Act, 1939.[7] On March 15, the government prescribed the Tamil Nadu COVID-19 Regulations, 2020. These regulations detail the responsibilities of hospitals and individuals, and the powers of officials in relation to the diagnosis, treatment, and containment of COVID-19. These include (i) creation of isolation wards in hospitals, (ii) containment measures in an area once positive cases are detected, and (iii) mandatory 14-day home isolation for asymptomatic air travellers from COVID-19 affected countries.[8] In its exercise of powers under the Epidemic Diseases Act, 1897,[9] the government of Tamil Nadu under section 2 of the Epidemic Disease Act, 1897 and regulations under it, ordered restrictions to be imposed in the territorial jurisdiction of Tamil Nadu till April 1, 2020.[10]

The government brought in the Tamil Nadu Public Health (Amendment) Act, 2020.[11] The Act came into force on the April 25, 2020. It amended section 74 of the Tamil Nadu Public Health Act, 1939 by adding a sub-section which punished people who prevented the burial of a person who had suffered from a notified disease. After this amendment, on September 4, 2020, Tamil Nadu Governor Banwarilal Purohit promulgated the Tamil Nadu Public Health Act, 1939 (Second Amendment) Ordinance, 2020 as per the wish of the Tamil Nadu government. This ordinance made violations against social distancing and lockdown a compoundable offence. New clauses were added in section 3 to include "quarantine" and "social-distancing". The Tamil Nadu government amended sub-section 2 of section 76 of the Tamil Nadu Public Health Act, 1939, declaring certain violations such as those relating to violation of quarantine, violation of social distancing or violations of standard operating procedures in commercial establishments as compoundable offences.[12]

Police and Law Enforcement

The Gaming and Police Laws (Amendment) Ordinance, 2020[13] was promulgated on November 21, 2020. The Tamil Nadu government justified the ordinance by using the reason of innocent people being cheated, especially the younger generation, leading to suicides due to financial debt. In February, 2021 the ordinance was converted into an Act[14] of the legislative assembly. The Act's constitutional validity was challenged in the Madras high court by the petitioners, Junglee Games Pvt. Ltd., in *Junglee Games Pvt. Ltd. v State of Tamil Nadu*.[15] The high court came down heavily on the Tamil Nadu government

7. Tamil Nadu Act 3 of 1939.
8. Anoop Ramakrishna, "Tamil Nadu Government's Response to COVID-19", *PRS Legislative Research*, April 24, 2020, *available at:* https://prsindia.org/theprsblog/tamil-nadu-government%E2%80%99s-response-to-covid-19 (last visited on March 13, 2022).
9. Act 3 of 1897.
10. G.O.(Ms).No.152, dated March 23, 2020, *available at*: https://www.capsi.in/notifications/Tamilnadu%20notification.pdf (last visited on March 14, 2022).
11. Tamil Nadu Act 26 of 2020.
12. Tamil Nadu Ordinance 10 of 2020.
13. Tamil Nadu Ordinance 11 of 2020.
14. The Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 (Act 1 of 2021).
15. 2021 SCC OnLine Mad. 2767.

for its lack of clarity in passing the bill. It noted that games of skill are not covered under the state's legislative competence as laid out under entry 34 of the state list. This provision was exclusively reserved for gambling involving games of chance. The court did, however, note that the state would be free to derive the required legislative competence to regulate games of skill under entries 1, 26 and 33 of the state list. The court held the Act to be manifestly arbitrary and going beyond the reasonable restrictions as provided under article 19 (1)(g) of the Constitution. There was a failure on the part of Tamil Nadu to prove the requirement for a total ban on games of skill, and the statement of objects of the Act being to protect the public from being victims of gambling did not satisfy the test of proportionality.

This was an instance of the Tamil Nadu government overstepping its legislative powers to subvert the process of law-making. An ordinance was promulgated without any powers vested by the Constitution for such promulgation, and the same was duly converted into an Act. It will be interesting to see if games of skill will once again be strictly regulated or banned through the alternate means provided by the Madras high court in the aforementioned case.

Labour Laws

In 2020, the TNLA passed two bills to repeal the Tamil Nadu amendments to various labour legislations and thereby bring those into conformity with the central uniform labour code. The two Acts were the Tamil Nadu Repealing Act, 2020[16] and the Tamil Nadu Repealing (Second) Act, 2020.[17] The Tamil Nadu Repealing (Second) Act repealed the Payment of Wages (Tamil Nadu Amendment) Act, 1957,[18] the Tamil Nadu Maternity Benefit (Amendment) Act, 1958,[19] and the Industrial Employment (Standing Orders) (Tamil Nadu Amendment) Act, 1960.[20] While a number of the repealed legislations provided protections that are otherwise not factored in to the central uniform labour code, the effect of repealing others appears to be the avoidance of inconsistencies.

Even though labour is an item on the concurrent list wherein both the union and the states have the power to legislate, it is observed that multiple labour legislations of the state have been repealed to bring them in conformity with the Centre's Labour Codes. Even the amendments that have been brought in by way of Acts in 2020 in the state are in line with the union's labour codes. When these Acts were passed, the then government aligned its interests with the government at the centre.

The Payment of Wages (Tamil Nadu Amendment) Act, 1957 had inserted section 11-A to the then Payment of Wages Act, 1936 providing for deductions in respect of house-accommodation.[21] After the repeal, this is dealt with under section 22 of the Code on Wages, 2019.[22]

Rule 6 of the Tamil Nadu Maternity Benefit Rules, 1967[23] had provided a 15-minute break for nursing. This time limit has been done away in the new Code.

16. LA Bill 11 of 2020. The bill received the Governor's assent in 2022; Act 15 of 2022.
17. Tamil Nadu Act 37 of 2020.
18. Tamil Nadu Act 10 of 1957.
19. Tamil Nadu Act 16 of 1958.
20. Tamil Nadu Act 24 of 1960.
21. Supra note 18, s. 3.
22. Act 29 of 2019.
23. GO.Ms.No.2610, Industries, Labour and Housing (Labour), dated Aug. 16, 1967.

Form J of the Tamil Nadu Maternity Benefit (Amendment) Act, 1958 had prescribed a six-week payment period in case of death of the woman or child. However, section 59 and 63 of the new Code provide that in case a woman dies during the period of maternity benefit, the benefits will be payable up to the day of her death. However, if she dies and leaves a child behind, then the maternity benefits for the full period will be payable by the employer.

Municipal Laws

Ten bills and two ordinances were passed relating to entry 5 of list II in 2020. Both ordinances, as well as eight bills, were passed in relation to urban and rural local body elections. Both ordinances, as well as six of the eight bills pertained to the extension of time for various preparatory works to conduct elections to urban and rural local bodies. The reason for the same was cited to be, among other things, COVID-19 and related obstacles. One of these eight legislations pertained to reverting to an indirect method of election to the offices of the mayor and chairperson of urban local bodies.[24] The last of these eight bills however pertained to the usage of electronic voting machines (EVMs) in rural elections and certain other changes to the office of the vice-chairman of the Panchayat union.[25] Lastly, the Town and Country Planning (Amendment) Act[26] and the District Municipalities (Amendment) Act[27] pertained to the modernization of existing laws.

Taxation

The Tamil Nadu Goods and Services Tax (Amendment) Ordinance, 2020[28] came into force on March 31, 2020. The central government promulgated the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (Ordinance 2 of 2020) on March 31, 2020, which, among others, amends Central Act 12 of 2017, by inserting section 168A in that Act. In consonance with said amendment, the Tamil Nadu Goods and Services Tax Act, 2017[29] was required to be amended. This ordinance was passed in furtherance of such purpose.

This was followed by the Tamil Nadu Goods and Services Tax (Second Amendment) Ordinance, 2020,[30] which was brought for the same reason as the First Amendment Act. This Act amended sections 2, 10, 22, 25 and other sections of the Tamil Nadu Goods and Services Tax Act, 2017. It also inserted a new section 31A providing for facility of digital payment to recipients. It also included section 101A making the national appellate authority for advance ruling under the Central Goods and Services Tax Act to be the appellate authority under this Act.

The Tamil Nadu Taxation Laws (Relaxation of Certain Provisions) Ordinance, 2020[31] was promulgated by the governor on May 23, 2020. This was brought in view of the spread of pandemic COVID-19 across many countries of the world, including India, causing immense loss to the lives of people, including

24. The Tamil Nadu Municipal Laws (Amendment) Act, 2020 (Act 5 of 2020).
25. The Tamil Nadu Panchayats (Amendment) Act, 2020 (Act 7 of 2020).
26. Tamil Nadu Act 24 of 2020.
27. Tamil Nadu Act 4 of 2020.
28. Tamil Nadu Ordinance 4 of 2020.
29. Tamil Nadu Act 19 of 2017.
30. Tamil Nadu Ordinance 9 of 2020.
31. Tamil Nadu Ordinance 5 of 2020, repealed and replaced with the Tamil Nadu Taxation Laws (Relaxation of Certain Provisions) Act, 2020 (Act 28 of 2020).

the trading community. It had become imperative to relax the time limit specified by the department of commercial taxes till June 30, 2017 and those Acts being administered with effect from the July 1, 2017, for completion or compliance of the statutory provisions mandated under the said Acts wherever necessary, which could not be completed or complied within the prescribed time due to *force majeure*.

Land Acquisition

On May 22, 2020, the governor of Tamil Nadu under the powers vested in him under article 213 of the Constitution, promulgated the Tamil Nadu Puratchi Thalaivi Dr. J. Jayalalithaa Memorial Foundation Ordinance, 2020[32] in continuation of the chief minister's 2017 announcement for possession of the house and to facilitate vesting of movable properties therein with the government.

The AIADMK in 2017 had announced its intention to convert the residence of the recently deceased former chief minister of the state, J Jayalalithaa, "Veda Nilayam" into a memorial accessible to the public. In response to this, the legal heirs of J Jayalalitha, J Deepa and J Deepak, filed a writ petition praying for the property to be handed over to them. The means used to acquire the land were unclear and formed an important part of the questions posed by the Madras high court to the government of Tamil Nadu.[33]

Education

With the exception of the Tamil Nadu Admission to Undergraduate Courses in Medicine, Dentistry, Indian Medicine and Homoeopathy on Preferential Basis to Students of Government Schools Act, 2020[34] (the TN Undergraduate Medical Reservation Act), the state acted broadly in accordance with the policy preferences of the central government. However, in the context of the national eligibility cum entrance test (NEET), the government of Tamil Nadu and the central government did see conflict in their approaches to lawmaking.

The NEET Undergraduate Reservation Issue

NEET was brought in by the union as an exclusive filter to ensure that only meritorious students seeking medical seats get admission into medical colleges as well as end the practice of collecting capitation fees, which stoked corruption. However, Tamil Nadu has always been against this move. Even constitutionally, entry 32 of list II clearly places incorporation, regulation and winding up of universities exclusively under the state government's purview. Moreover, entry 44 of list 1 (union list) excludes universities from the Union government's purview. This issue has been a bone of contention between Tamil Nadu and the central government since 2017, with both the ruling and principal opposition parties protesting against it.[35]

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32. Tamil Nadu Ordinance 3 of 2020.
33. Writ Petition No. 9285 of 2020. On 24 November, 2021, the Madras high court categorically set aside the ordinance to convert Veda Nilayam into a memorial and handed the property over to the legal heirs. It also, by way of the same order, granted leave to the AIADMK to appeal against the decision.
34. Act 34 of 2020.
35. Amarnath K Menon, "Why Tamil Nadu is against NEET and other entrance tests", *India Today*, Sep. 28, 2021, *available at:* https://www.indiatoday.in/india-today-insight/story/why-tamil-nadu-is-against-neet-and-other-entrance-tests-1858127-2021-09-28 (last visited on March 10, 2022).

On September 15, 2020 the legislative assembly tabled the TN Undergraduate Medical Reservation Bill in the Assembly. The same was passed, received the governor's assent and was notified on October 30, 2020. This was in response to the introduction of the national eligibility cum entrance test (NEET) for undergraduate medical and dental courses countrywide. The TN Undergraduate Medical Reservation Act introduced 7.5 percent horizontal reservation for students studying in Tamil Nadu government schools, excluding government-aided schools and schools under the CBSE or ICSE syllabus. The objective behind the Act was stated as being "to bridge the inequalities between government and private school students and take affirmative action to bring real equality between the two by giving them an equal chance to become medical professionals."

Section 3 of the Act provides for admission on preferential basis which states that a 7.5 percent of the government seats shall be set apart on preferential basis to students studied in government schools. Under NEET, 15 percent of seats are reserved for all-India quota and the rest 85 percent of the seats are filled by state counselling process. The very reason NEET was brought in was to have a uniform system of admission to medical seats throughout the country. By bringing in this additional reservation quota, it can be seen that the intention of the legislature of TN has been to circumvent the central law and provide additional reservations given the fact that the central law by itself has given a bifurcation of reservation seats.

The Madras high court has also upheld the TN Undergraduate Medical Reservation Act. In the case of *D Arun v. State of Tamil Nadu*,[36] the high court of Madras confirmed an order of a single judge who ordered the provision of a medical seat for a student hailing from Thanjavur under the NEET 7.5 percent quota.[37]

Examination of University Acts

Many state universities were renamed to include the former CM Dr. J Jayalalithaa's name into their name. This is of relevance as these Acts were passed in 2020 when the AIADMK, the party headed by Dr. Jayalalithaa until her passing, was in power. Furthermore, these university Acts conferred the state government with the power of inspection and inquiry citing implementation of government schemes and government funding as reasons.

The Tamil Nadu Dr. Ambedkar Law University (Amendment) Act, 2020[38] amended section 15 of the Tamil Nadu Dr. Ambedkar Law University Act, 1996. This section redefines the qualifications of a registrar. Initially the qualifications were very narrow, now it has been amended to include more qualifications, making it mandatory to have an LLM, have teaching experience etc. This was done to take into consideration the qualification prescribed for the post of registrar by the University Grants Commission and the suggestion of the state government thereon.

The Tamil Nadu Music and Fine Arts University and Private Colleges (Regulation) Amendment Act, 2020[39] amended the Tamil Nadu Music and Fine Arts University Act, 2013 and the Tamil Nadu Private Colleges (Regulation) Act, 1976. The university has been renamed as The Tamil Nadu Dr. J Jayalalithaa Music and Fine Arts University.

36. W.P.(MD)NO.17835 OF 2020.
37. 2021 SCC OnLine Mad 68.
38. Tamil Nadu Act 9 of 2020.
39. Tamil Nadu Act 1 of 2020.

The Tamil Nadu Fisheries University (Amendment) Bill, 2020[40] and the Tamil Nadu Veterinary and Animal Sciences University (Amendment) Bill, 2020[41] aimed to amend various sections of the Tamil Nadu Fisheries University Act, 2012 and the Tamil Nadu Veterinary and Animal Sciences University Act, 1989 respectively. These amendments were aimed to monitor the use of government funds by the universities but the bills were not enacted and only signify governmental intention to oversee the financial affairs of the concerned universities.

Public Debt

Article 266 of the constitution of India provides that all revenue received by the state government, as well as all loans raised by that government by the issue of treasury bills, loans or ways and means advances and all money received by the state government on repayment of loans shall form one consolidated fund which is to be described as the consolidated fund of the state. According to article 266(3) of the Constitution of India, a state government cannot appropriate any money from the state fund except in accordance with law and for purposes provided by the constitution.

An appropriation bill is when, on the governor's advice, a bill is submitted in the legislative assembly to provide for the appropriation out of the state's consolidated fund of all the money required to fulfill the vote as well as charged expenditure. In the legislative assembly, no amendment shall be offered to any such bill that has the effect of varying the amount or changing the destination of any such grant or varying the amount of any expenditure charged to the consolidated fund. The amount shown in this bill can be spent during the financial year concerned once it has been passed by the legislative assembly and the governor has assented to it.[42]

The year 2020 saw a significant increase in appropriations from the previous two years. The total amount allocated via various appropriation bills in 2020 was almost thrice the total in 2019 and twice of that in 2018.

The TNLA passed not less than five Appropriation Acts in 2020 for a total amount of INR 5,26,130,93,00,000 (five lakh twenty-six thousand one hundred and thirty crores and ninety-three lakh rupees). However, excluding the amount appropriated under the Tamil Nadu Appropriation [No.3] Act, 2020,[43] which was inclusive of the sum of the amount specified in section 2 of the Tamil Nadu Appropriation (Vote on Account) Act, 2020,[44] the total amount would be INR 3,17,799,63,25,000.

On February 25, 2020, the Tamil Nadu Appropriation Act, 2020[45] provided for the state government to appropriate a sum of INR 6,580,15,24,000/- (six thousand five hundred and eighty crore fifteen lakh twenty-four thousand rupees) out of the consolidated fund of the state. This was for the purposes of the financial year which commenced on April 2019.

On March 24, 2020, the Tamil Nadu Appropriation [No.2] Act, 2020[46] was passed. This Act provided for appropriation out of the consolidated fund of the state for the financial year April 2019-2020. The

40. LA Bill No 2 of 2020.
41. LA Bill No 10 of 2020.
42. Government of Tamil Nadu, "Tamil Nadu Budget Manual−Volume 1" (1992) *available at*: https://tnbudget.tn.gov.in/tnweb_files/TN_Budget_Manual_Vol_I_Book.pdf (last visited on March 13, 2022).
43. Tamil Nadu Act 16 of 2020.
44. Tamil Nadu Act 15 of 2020.
45. Tamil Nadu Act 12 of 2020.
46. Tamil Nadu Act 14 of 2020.

appropriation was for a sum of INR 6,408,81,57,000/- (six thousand four hundred and eight crore eighty-one lakhs and fifty-seven thousand rupees).

On the same date, i.e., on March 24 2020, the Tamil Nadu Appropriation (Vote on Account) Act, 2020[47] provided for the appropriation out of the consolidated fund of the state a sum of INR 1,95,342,32,94,000/- (one lakh ninety-five thousand three hundred forty-two crore thirty-two lakh and ninety-four thousand rupees). This money was appropriated for a part of the financial year of April 2020-2021.

On April 11, 2020, the Tamil Nadu Appropriation [No.3] Act, 2020[48] was passed. This Act provided for the appropriation out of the consolidated fund of the state, for a sum of INR 3,04954,43,50,000/- (three lakh four thousand nine hundred fifty-four crore forty-three lakh and fifty thousand rupees). This sum was inclusive of the sum of the amount specified in section 2 of the Tamil Nadu Appropriation (Vote on Account) Act, 2020. The said sum was appropriated for the requirements of the financial year April 2020-2021 and for the expenditure charged on the said fund of the state for that year

The Tamil Nadu Appropriation [No.4] Act, 2020[49] was passed on September 26, 2020. This Act was for the supplementary appropriation out of the consolidated fund of the state for the services and purposes of the financial year 2020-21. This provided appropriation for a further sum of INR 12,845,19,75,000/- (twelve thousand eight hundred and forty five crore nineteen lakh and seventy five thousand rupees).

The Tamil Nadu Fiscal Responsibility (Second Amendment) Act, 2020[50] amended section 4 of the Tamil Nadu Fiscal Responsibility Act, 2003 to maintain the ratio of fiscal deficit to gross state domestic product as not more than three per cent by March 31, 2022 and adhere to it thereafter.

By way of comparison, in 2018, the TNLA passed three Appropriation Acts which amounted to a total of INR 2,61,309,40,93,000 (two lakh sixty-one thousand three hundred and nine crore forty lakhs ninety-three thousand rupees). In 2019, the TNLA passed three Appropriation Acts which amounted to a total of 1,89,20,891,83,000 (one lakh eighty-nine thousand two hundred and nine crore ninety-one lakh eighty-three thousand rupees).

The increased level of appropriations would inevitably have an effect on Tamil Nadu's fiscal deficit. This was highlighted by the opposition at the time of presenting the interim state budget for 2021-2022. The fiscal deficit for this year was over INR 84,000 crore and the then leader of the opposition, MK Stalin, in a statement, condemned the government for an alleged Rs. 5.70 lakh crore debt. By way of explanation, the state government, at the relevant session, noted that the pandemic had caused the state's own tax revenue (STOR) to collapse in the first four months of the current financial year and the collection of state GST and value-added tax (VAT) started to pick up from August, 2020. The Deputy Chief Minister O Panneerselvam, who held the finance portfolio at the time stated that, due to the pandemic, there was a sharp drop in revenue, "but the expenditure levels had to be enhanced to protect people's welfare." Hence, "it is completely unavoidable that the government had to resort to borrowings

47. *Supra* note 44.
48. *Supra* note 43.
49. Tamil Nadu Act 22 of 2020.
50. Tamil Nadu Act 21 of 2020.

resulting in a higher fiscal deficit".[51] Regardless, it is clear that appropriations in 2020 resulted in a significant increase in the fiscal deficit of Tamil Nadu.

Co-operative Societies

The government of Tamil Nadu passed the Tamil Nadu Co-operative Societies (Amendment) Act, 2020[52] in order to create accountability within cooperative societies. Prior to the amendment, in the Tamil Nadu Co-operative Societies Act, 1983,[53] there was no provision to place the president or vice-president of a registered cooperative society under suspension, if they are alleged to have committed misappropriation or breach of trust or gross mismanagement of the affairs of the society or any offence involving criminal misconduct or moral turpitude.

The government amended the Tamil Nadu Act 30 of 1983 by inserting section 76-A through the Tamil Nadu Co-operative Societies (Amendment) Act, 2020. This particular amendment was challenged before the Madras high court through a writ petition filed by a Perambur-based cooperative building society's president, Krishnamoorthy. The Madras high court dismissed the writ, finding that the amendment had clearly been passed with an intent to protect cooperative societies.[54]

Agriculture

Within the space of a week, both Tamil Nadu and the union passed bills relating to Agriculture Produce Marketing Committees (APMC). The former passed the Tamil Nadu Agricultural Produce Marketing (Regulation) Second Amendment Ordinance, 2020[55] whereas the latter passed the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020. In India, agriculture is a state subject found in the state list of the seventh schedule. The centre's circumvention of APMCs in Tamil Nadu and the rest of the country raised a few eyebrows. This is what eventually led to the farmer's protests which lasted well over a year, until the centre decided to back down and repeal the Acts.

In Tamil Nadu, the Tamil Nadu Agricultural Produce Markets Act, 1959 was passed to establish APMCs in order to prevent the exploitation of farmers by local middlemen. APMCs controlled the wholesale agricultural transactions. It consisted of government representatives, farmers and traders. Prior to the union's proposed changes, a farmer was only allowed to sell to licensed traders of the APMCs. The change proposed was further privatisation of the market and a viable private alternative to APMCs without disbanding them completely. The scope of 'trade area' was enlarged by the central law to any area or location or place of production, collection and aggregation anywhere in the country for the trade of farmers' produce. Nevertheless, this was inapplicable to the physical boundaries of those market yards or markets falling under the state APMC Acts.

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51. PTI, "Tamil Nadu Tables Interim Budget Ahead Of Assembly Elections", *NDTV*, Feb. 23, 2021, *available at*: https://www.ndtv.com/india-news/tamil-nadu-tables-interim-budget-ahead-of-assembly-elections-2376948 (last visited on March 14, 2022)
52. Tamil Nadu Act 13 of 2020.
53. Tamil Nadu Act 30 of 1983.
54. DT Next, "High Court upholds TN's amendment allowing cooperative society registrars to initiate suspension", *DT Next*, Oct. 7, 2021, *available at:* https://www.dtnext.in/News/TopNews/2021/10/07141237/1322129/Madras-High-Court-upholds-states-amendment-allowing-.vpf (last visited on March 10, 2022).
55. Tamil Nadu Ordinance 6 of 2020.

The Tamil Nadu ordinance was promulgated to amend the APMC Act, which covered a host of areas, such as providing for geographically restriction-free trade or transaction of agricultural produce across the state; enhancing transparency in trade; promoting the emergence of multiple channels to competitive marketing, and encouraging investments in the development of markets and marketing infrastructure. All of this was brought to a standstill with the centre's bill being introduced in a week's time. Among other things, the central law's prevalence over the state law meant that traders will not require a license or have to pay a fee or cess for transactions outside APMC markets.

The following points cover what the Tamil Nadu ordinance had proposed:[56]

- The establishment of the whole of Tamil Nadu as a unified market area. The market areas under the control of APMCs are excluded.
- The committee on Agricultural Marketing Reforms (2013) had noted that there is a high wastage of fruits and vegetables due to lack of marketing infrastructure, absence of sufficient cold storage areas, and a disorganised distribution system. The new ordinance addresses this issue by allowing any person to establish a private market yard in any area of the unified market area and grants the state government the power to notify structures as private market sub-yards. Licenses obtained for the same will be valid for a period of three years.
- "The ordinance allows direct marketing, i.e., direct wholesale purchase of agricultural produce from farmers, outside the APMC markets. It provides that collection or aggregation centres can be set up close to any production area or within a designated food park for direct marketing. It can also be carried out, without setting up such centres, in areas specified for this purpose, including private market yards and sub-yards. A buyer engaging in direct marketing is required to obtain a licence from the director and report trade transactions on a monthly basis. Such licence will be valid for a period of three years."[57]
- Dispute Settlement: The ordinance provides for the director to be the arbiter of all disputes between various categories of licensees.

Despite being allied with the union government on most policy issues, the AIDMK expressed disagreement with the central decision to exempt hydrocarbon exploration projects from Environmental Impact Assessment (EIA) and public consultation, vide an amendment to the EIA Notification, 2006.[58] The amendment came at the heels of Vedanta applying to carry out exploratory activities in the Cauvery delta, a proposal that was met with severe public opposition for its potentially destructive impact on a fragile ecosystem and the livelihoods of farmers in the region.[59] The Assembly passed the Tamil Nadu Protected Agricultural Zone Development Act, 2020, which designated a significant portion of the Cauvery delta as a 'protected agricultural zone' where industries such as zinc, copper, aluminium smelting; iron and steel processing; shipbreaking and the exploration, drilling and extraction of oil and

56. PRS, "The Tamil Nadu Agricultural Produce Marketing (Regulation) Second Amendment Ordinance, 2020", *PRS Legislative Research*, *available at:* https://prsindia.org/bills/states/the-tamil-nadu-agricultural-produce-marketing-regulation-second-amendment-ordinance-2020 (last visited on March 13, 2022)
57. *Ibid*.
58. S.O. 236 (E), Ministry of Environment, Forest and Climate Change, dated Jan. 16, 2020.
59. The public outrage prompted a roll-back of the requirement of public consultation, instead of a rejection of the application. Nityanand Jayaraman, "Public Hearing Exemption for Hydrocarbon Exploration Makes a Bad Law Worse", *The Wire*, Jan. 19, 2020, *available at*: https://thewire.in/environment/eia-public-hearing-exemption-hydrocarbon-exploration-drilling-environment-ministry (last visited on April 18, 2022).

natural gas would be barred.[60] The statute, however, does not speak to the status of existing industries nor covers the entire geographical area of the delta. The union government's sleight of hand at the stated behest of industry,[61] and Tamil Nadu's response, forms part of a larger story of relentless incursions by the centre into states' powers to manage resources and safeguard sensitive ecosystems.

Conclusion

For the most part, Tamil Nadu was broadly aligned with the law-making objectives of the central government. As with many other states, the government of Tamil Nadu used its executive powers to try and create order out of the chaos wrought by the pandemic through several notifications and ordinances relating to public health. The increasing adoption of online gambling by the state's citizenry during the lockdown prompted the government of Tamil Nadu to pass an ordinance to prohibit this practice. However, the constitutional validity of such an ordinance was challenged and defeated in Tamil Nadu, as it was in other states which had attempted the same. The coordination between Tamil Nadu and the central government was apparent with relation to laws relating to labour as well as agriculture, with the state government passing laws enabling the uniform labour code as well as the Indian Agriculture Acts of 2020 (also called the farm bills). However, at certain points, there was conflict between the government of Tamil Nadu and the central government, particularly with relation to NEET. Tamil Nadu introduced legislation in 2020 which introduced 7.5 percent horizontal reservation for students studying in Tamil Nadu government schools. This has so far been upheld by the courts of India. The state also saw itself at loggerheads with the union in relation to hydrocarbon exploration in the Cauvery delta, leading to the passage of a statute designed to frustrate any efforts towards the sanctioning of the same. In terms of public debt, the government of Tamil Nadu dipped significantly into the Tamil Nadu consolidated fund. This was a move which, though perhaps necessary due to the circumstances of the pandemic, significantly increased Tamil Nadu's fiscal deficit and created a debt that would be inherited by governments to come.

60. Tamil Nadu Act 11 of 2020, s. 4(1).

61. The preambulatory clause of the notification states: "the Ministry of Environment, Forest and Climate Change has also received references requesting for exemption from requirement of prior environmental clearance under the provisions of the Environmental Impact Assessment Notification, 2006 for exploration drilling in respect of on-shore and off-shore oil and gas" indicating that the ministry in charge of protecting the environment now seems to take its instructions from industrialists. *Supra* note 58.

TELANGANA

Aymen Mohammed[1] and Amita Dhanda[2]

Introduction

The state of Telangana has a bicameral legislature, with a directly elected legislative assembly (vidhan sabha) and a legislative council (vidhan parishad) that is constituted with 40 members in accordance with article 171 of the Constitution of India.

The Telangana legislative assembly is in its second term. The new state was created in 2014 from territories of undivided Andhra Pradesh following a decades-long movement for a separate state. The Andhra Pradesh Reorganisation Act, 2014 was enacted by parliament on March 1, 2014, published in the official gazette on March 2, 2014 and came into force on June 2, 2014.[3] The Act provided for various modalities with respect to the bifurcation of the state, including the status of the capital city Hyderabad[4] and the manner in which water resources were to be shared.[5] In addition, section 101 of the Act allowed the successor states of Telangana and Andhra Pradesh to adopt the laws that the unified state had enacted earlier.

The Telangana Rashtra Samiti (TRS) which had led the movement for a separate Telangana state won a majority of the seats in the legislative assembly in the maiden elections held in 2014. K. Chandrasekhar Rao, president of TRS, was sworn in as chief minister of the state. On September 6, 2018, Rao resigned and recommended the dissolution of the Assembly. Elections to the Assembly were held nine months before the completion of the term of the House on December 7, 2018.

TRS won its second term, winning 88 seats out of 119 seats in the Assembly, increasing its seat-share by 25 seats from the previous term. The Indian National Congress won 19 seats, of which 12 MLAs would eventually merge their group with the ruling party by June 2019. With seven MLAs, the All India Majlis-e-Ittehadul Muslimeen (AIMIM) is numerically the second largest political party in the Assembly. However, the speaker of the House has not recognised its leader as the leader of opposition in accordance with the Telangana Payment of Salaries and Pension and Removal of Disqualifications Act, 1953.[6] TRS and AIMIM have been described as 'friendly parties'[7] and, in effect, there is no substantive opposition in the House against the ruling party. In the 40-member legislative council too the TRS enjoys a similar dominant position, without any major representation from opposition parties.

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3. SO 665(E) *Gazette of India* (Extra) Part II S 3(ii) March 4, 2014.
4. The Andhra Pradesh Reorganisation Act 2014 (Act 6 of 2014), s. 5.
5. *Id*. Part XI.
6. Act 2 of 1954.
7. TNM Staff, "With Cong out, TRS-friendly AIMIM stakes claim for 'Opposition' status in Telangana", *The News Minute*, June 08, 2019, *available at*: https://www.thenewsminute.com/article/cong-out-trs-friendly-aimim-stakes-claim-opposition-status-telangana-103252 (last visited on March 23, 2022).

The absence of a numerically viable independent political opposition is reflected in the functioning of both Houses. As discussed in the next section, the Telangana legislature enacted statutes without any substantive discussion, usually within a few hours of their introduction.

Functioning of the Telangana Legislature: Statistics

According to statistics collated by PRS[8] and the Telangana state legislature, the Assembly functioned for a total of 19 days in 2019 and met for four sessions. In 2020, it met for 17 days but held only two sessions. The legislative council met for two sessions totalling 16 days in 2020 while in 2019, the council held four sessions but only for a total of 10 days. The Assembly functioned for a total of 80.5 hours in 2020,[9] while, the Council worked for a total of 51 hours and 20 minutes.[10]

The Telangana legislature passed 22 bills in 2020. Fourteen of these bills were introduced in and passed by the Assembly on the same day. Four bills were introduced in the Assembly on September 10 and passed on September 14, while another four bills were introduced on September 9 and passed by the House on September 11.

A majority of the bills (16) were passed by the Council on the very next day of the Assembly passing them. Two appropriation bills were passed by the Council on the same day as they were passed by the Assembly. Four bills were passed by the Council four days after being passed by the Assembly.

Amongst the 22 bills, two were appropriation bills. Two other bills sought to amend union laws, and were reserved for presidential assent. Neither of the two bills received presidential assent before the end of the year.[11] Thirteen bills dealt with amendments to state laws, four bills were new legislations and one bill repealed an existing state law. Four ordinances were promulgated in 2020 and were eventually enacted as statutes by the legislature, while two ordinances that were promulgated in December 2019 were laid before the House in 2020. Both of these ordinances were also enacted as statutes by the legislature in 2020.

The legislature also adopted four government resolutions through the year. The resolutions have been discussed in this survey as they raised substantive questions with respect to the state's relationship with the union government.

The legislature is intended to hold the executive accountable. Similarly, the purpose of a bicameral legislature is to act as a "cooling chamber"[12] and to check on the impulses of the elected House. However,

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8. PRS Legislative Research, "Functioning of 2nd Telangana Assembly (2018-2023)", *available at:* https://prsindia.org/legislatures/states/functioning-2nd-telangana-assembly-2018-2023 (last visited on March 23, 2022)
9. Telangana Legislature, Assembly Statistics, *available at*: https://www.telanganalegislature.org.in/web/legislative-assembly/statistics (last visited on April 18, 2022).
10. Telangana Legislature, Council Statistics, *available at:* https://www.telanganalegislature.org.in/web/legislative-council/statistics (last visited on April 18, 2022).
11. President's Secretariat, Statement of State Bills Assented/Withhold Assent/Returned with a Message by the President under Article 200 Read with Article 254(2) and Article 201 of the Constitution of India (From 01 January, 2020 to 31 December, 2020), *available at*: https://rashtrapatisachivalaya.gov.in/01-january-2020-31-december-2020-0 (last visited on March 23, 2022).
12. Gaurav Mukherjee, and Malavika Prasad, "Reinvigorating Bicameralism in India" 3(2) *University of Oxford Human Rights Hub Journal* 96 (May 21, 2021), *available at*: https://ohrh.law.ox.ac.uk/wp-content/uploads/2021/04/U-of-OxHRH-J-Reinvigorating-Bicameralism-in-India-1.pdf (last visited on March 23, 2022).

with party-allegiances overriding institutional roles, the legislature was reduced to a mere formality. This is reflected not only in the conduct of such a large amount of legislative business in a very short span of time but also in the fact that non-legislative business such as starred/unstarred questions, and short-duration discussions were allocated scant time.

Survey of Legislation

The legislative activity in the state can broadly be classified into the following brackets: local self-government, land registration reforms, goods and services tax, civil and criminal procedure, state finances and administrative ease.

Local Self-Government

The Telangana legislature carried out significant changes in the functioning of local bodies over the course of the year. List II of schedule VII empowers the state legislature to enact laws on local government,[13] while parts IX and IXA delineate the legislature's powers with respect to the constitution and composition of panchayats and municipalities respectively.

Article 243T requires that seats proportionate to the population of scheduled castes and scheduled tribes should be reserved for them. It sets a requirement that a minimum of one-third of total seats should be reserved for women, and one-third of the seats reserved for SCs/STs should be reserved for women of the communities. The article also clarifies that the state legislature is not barred from reserving seats for backward classes.

The legislature amended the Greater Hyderabad Municipal Corporation Act, 1955[14] in the run-up to urban local body elections in the Greater Hyderabad area. The amendment increased reservation for women from 25 percent of the total strength of the corporation to 50 percent. The amendment also increased horizontal reservation for women in seats reserved for scheduled castes, scheduled tribes and backward classes.

The principal Act required that reserved seats be allotted by rotation after each term of the corporation. The Amending Act, by a deemed retrospective amendment,[15] now permitted that seats be allotted by rotation after the completion of two terms.[16] This provision was unsuccessfully challenged before the Telangana high court.[17]

The principal Act empowered the state election commission to notify the schedule for elections under the Act. The amending provision now requires the concurrence of the state government before the

13. The Constitution of India, 1950, Entry 5, List II, Schedule VII.
14. The Greater Hyderabad Municipal (Amendment) Act 2020 (Act 20 of 2020).
15. Section 1(2) of the Amendment Act provided that section 2 of the Act shall be deemed to have come into force from Jan. 8, 2016.
16. Section 2 of the Amending Act thus created the fiction that rotation was always permitted for two terms, and therefore, the rotation for the previous term would be sufficient for the next term (starting 2020) as well.
17. Marri Ramu, "HC declines orders on rotation of GHMC reserved wards", *The Hindu*, Nov. 16, 2020, *available at*: https://www.thehindu.com/news/national/telangana/hc-declines-orders-on-rotation-of-ghmc-reserved-wards/article33110369.ece (last visited on March 23, 2022).

notification of such a schedule.[18] While the amending provision provides a long list of justifications—such as logistics, ongoing public health emergencies, law and order—as to why such concurrence may be necessary, it does raise concerns regarding the independence of the election commission.

Article 243S of the Constitution deals with the constitution and composition of wards committees. The Amending Act also replaced the existing system of constituting ward committees. Whereas earlier, there was to be one ward committee for each ward, this was now replaced with four committees for each ward "consisting of residents from the ward and from among the resident welfare associations, community-based organizations, other such groups and individuals."[19] The principal provision had provided for a clear system of constituting the ward committees, their term, how they would be chaired, and the time within which they would be constituted. The amending provision seems to perceive these as matters of detail which are better addressed by delegated legislation. The principal provision required that fifty percent of the members nominated to ward committees must be women, this requirement was retained by the amending provision.[20]

A few amendments pertained specifically to greenery and the environment. Article 243W, read with the twelfth schedule to the Constitution, allows municipalities to be endowed with powers and responsibilities pertaining to "urban forestry, protection of the environment and promotion of ecological aspects." The Amending Act substituted the earlier section 8B by incorporating new functions for ward committees, including maintenance of "tree plantations, Haritha Haram and survival of 85% of plants" and "proper maintenance of sanitation and solid waste management...". The Amending Act also mandated that 10 percent of GHMC's annual budget must be allocated for "'Green Budget' to meet the requirements of plantations and nursery" and that a designated officer "shall draw up Ward-wise and Circle-wise 'Green Action Plan'." Elaborate provisions were introduced by the Amending Act with respect to plantations and the maintenance of nurseries.

In a typical case of overreach, an enabling provision was also incorporated to disqualify a ward member or to remove the special/nodal officer if the survival of plants is less than 85 percent or if there is "no or lackadaisical involvement" on their part.[21] In the absence of any statutory guidance with respect to the procedure to be followed for such removal, the validity and effectiveness of such provisions are questionable.

Furthermore, such conflation of greenery/plantation with more holistic environmental protection and biodiversity in urban settings raises serious questions on the actual purpose for which such provisions have been enacted.

Entry 2 of the twelfth schedule allows state legislatures to empower municipalities to deal with "regulation of land-use and construction of buildings". The Telangana Municipal Laws (Amendment) Act, 2020[22] also amended the GHMC Act, 1955 and the Telangana Municipalities Act, 2019[23] to provide for an updated procedure for mutation and collection of no-dues certificates for electricity, water charges and property taxes at the time of registration of a transfer of property. The mutation is to be recorded digitally and a mutation certificate is to be issued through the "Dharani Portal" set up by the

18. The Greater Hyderabad Municipal Corporation Act, 1955 (as amended), s. 10(6).
19. *Id.* s. 8-A.
20. *Id.* s. 8A(2).
21. *Id.* s. 183-A and 183-B.
22. Act 8 of 2020.
23. Act 11 of 2019.

state government for record of rights. An identical provision was also made in the Telangana Panchayat Raj Act, 2018[24] by an Amending Act.[25]

These amendments must be seen in the context of the overhaul of the property registration system that was carried out by the state government in 2020. Emphasis was placed on the clear title of land records and reducing discretionary powers of officers carrying out registration of land transfers. These changes have been discussed fully in the next section.

Furthermore, the Telangana Municipal Laws (Amendment) Act, 2020 carried out some changes to territories of municipalities in the state. New municipalities were constituted by merging previously rural areas; some areas were either incorporated or excluded from the scope of previously constituted municipalities.[26]

Lastly, the legislature enacted the Telangana State Building Permission Approval and Self Certification System (TS- bPASS) Act, 2020[27] which introduced an online system of self-certification and deemed approvals for constructions. The statute aligns with the government's policy of automating approvals, providing single-window clearances and setting timelines for decisions on applications in other sectors such as its TS-iPASS[28] initiative for industrial approvals. This statute also aligns with the introduction of Dharani Portal which was expressly aimed at reducing the scope of administrative discretion.[29] The Act's provisions override any other state laws pertaining to building permissions and enforcement.[30]

Land Registration Reform

By virtue of entry 45 of the state list of the seventh schedule, the state is empowered to legislate on "land revenue, including…. the maintenance of land records, survey for revenue purposes and records of rights...". The state legislature carried out an overhaul of the manner in which land rights are recorded and registered by state authorities. It also set up a "Dharani Portal" that was intended as a one-stop digital portal for record of rights pertaining to land.

At the outset, it is important to flag the growing concerns over automated decision-making to the exclusion of human reason and discretion. The government cited the existence of discretionary powers as a significant source of corruption and sought to reduce it by automating statutory processes.[31] This

24. Act 5 of 2018.
25. The Telangana Panchayat Raj (Amendment) Act, 2020 (Act 7 of 2020).
26. The Telangana Municipalities Act, 2019 (Act 11 of 2019), Schedule II.
27. Act 12 of 2020.
28. The Telangana State Industrial Project Approval and Self-Certification System Act (TS- iPASS) Act, 2014 (Act 3 of 2014).
29. The bills, according to the chief minister, envisage removal of discretionary powers vested with the officials at different levels and ensuring transparent and corruption-free land dealings. M Rajeev, "Telangana pushes for major reforms in revenue administration", *The Hindu*, Sep.9, 2020*, available at: h*ttps://www.thehindu.com/news/cities/Hyderabad/state-pushes-for-major-reforms-in-revenue-administration/article32565740.ece (last visited on March 27, 2022).
30. *Supra* note 27, s. 24.
31. For example, the statement of objects and reasons to Pattadar Bill (Bill 7 of 2020) expressly states that one of the reasons for introducing the bill was "to evolve good practices to end corruption in revenue administration" and "to provide accountable and responsive revenue administration as part of smart and good governance". Similarly, the statement of objects and reasons to the Municipal Laws (Amendment) Bill, 2020 (Bill 9 of 2020) cites the need to "curb and avoid corrupt practices during the course of title of transfer". Also see, statement of objects and reasons to the Indian Stamp (Telangana Amendment) Bill, 2020 (Bill 19 of 2020) which justifies the amendment citing the principal provision which was "creating discretionary powers to the registering authority".

was not only cited as the justification for land registration reform, but also for TS-iPASS[32] and TS-bPASS.[33]

The Telangana Agricultural Land (Conversion for Non-Agricultural Purposes) (Amendment) Act, 2020[34] amended the 2006 Act[35] to replace the process of converting land use of agricultural land to non-agricultural. The new process reduces the scope of administrative discretion and replaces it with an online system. If the competent authority finds that the land sought to be converted "is in consonance with the entries in the record of rights available on Dharani" and that the required taxes, penalties and fees are paid, then the conversion certificate is to be issued. The tahsildar is also required to immediately delete the land from record of rights maintained for agricultural lands. The Act also mandates that the land is immediately recorded in the non-agricultural Dharani portal. The Amending Act also replaced references to "Revenue Divisional Officer" with "Tahsildar".

The Telangana Rights in Land and Pattadar Pass Books Act, 2020 ("Pattadar Act")[36] deals with transfer and registration of agricultural land. The primary goal of the Act is to ensure that record of rights is maintained electronically and to ensure real-time, automated acquisition of rights immediately after transfer of property. The law provides for the manner in which transfer or acquisition of property shall be recorded and effected by the authorities through the website. It emphasises that change in the record of rights must be immediate and that proof of the records (through pattadar pass-book cum title deed) is issued to the parties immediately. Besides administrative efficiency, one of the reasons cited by the government was that the previous system was riddled with errors, and often rights were incorrectly recorded or not recorded at all. In the absence of proper records, and with the insistence of physical documents, farmers were finding it difficult to obtain loans from lending agencies.

Since maintenance of revenue records in villages was digitised and tahsildars were entrusted with registration of agricultural lands,[37] the legislature enacted the Telangana Abolition of the Posts of Village Revenue Officers Act, 2020[38] abolishing posts of village revenue officers (VROs) while providing for a process by which they will be absorbed into other offices. Similarly, an amendment[39] was also made to section 47-A of the Indian Stamp Act, 1899[40] to remove discretionary powers of the registration officers while registering any instrument on grounds that the market value set out in the instrument is not correct. The amending provision now requires that instruments should be presented for registration only after payment of the full amount of the payable stamp duty "on the consideration

32. Telangana State Industrial Project Approval and Self Certification System (TS-iPASS) Bill, 2014 (L.A. Bill 2 of 2014), Statement of Objects and Reasons.
33. The statement of objects and reasons to this bill again reiterates the need for speedy approval of building permissions in a more transparent and time-bound manner. Telangana State Building Permission Approval and Self Certification System (TS-bPASS) Act, 2020 (L.A. Bill 16 of 2020), Statement of Objects and Reasons.
34. Act 19 of 2020.
35. The Telangana Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 (Act 3 of 2006).
36. Act 9 of 2020.
37. "[G]overnment after careful examination of the matter, hereby accept the proposals of the Commissioner and Inspector General of Registration and Stamps, Telangana, Hyderabad, for formation of new sub-districts under section 5 of the Registration Act, 1908 (Central Act No.16 of 1908) and establishment of offices of Joint Sub-Registrars under section 7(1) of the Registration Act, 1908 and also appointing Tahsildars as Joint Sub-Registrars in respect of agricultural lands." *See*, G.O.Ms. No.118 dated Oct. 28, 2020.
38. Act 10 of 2020.
39. L.A. Bill 19 of 2020.
40. Act 2 of 1899.

value of the property set forth in the instrument or the market value determined as per the Market Value Guidelines,"[41] whichever is higher. It must be noted that section 47-A was itself incorporated into the Act as a state amendment applicable to the unified state of Andhra Pradesh. However, the 2020 amending bill was reserved for presidential assent under article 254(2) of the Constitution. The bill did not receive presidential assent in 2020.

The deployment of Dharani has been subject to at least eight litigations[42] pending before the Telangana high court. The high court stayed its use in registering non-agricultural lands in the absence of statutory backing.[43] Questions have also been raised as to the validity of seeking Aadhaar and caste details of those seeking to transfer property.[44] While industry groups welcomed these reforms,[45] opposition parties[46] and civil society have raised questions on the functioning of Dharani portal. For example, a persistent issue has been over the security of tenure of assigned lands,[47] rights of tribal communities over protected lands[48] and protection of individuals owning property based on notarised but unregistered documents (*sada bainama*).[49] While some of these concerns are more in the nature of technical glitches, other concerns reflect anxieties over how clear record of rights has often been to the disadvantage of some vulnerable groups.

Despite longstanding possession or interest in land, the absence of formal protections often puts them at risk of dispossession. It must be noted that the Pattadar Act expressly protects assigned lands and lands in scheduled areas. Similar protection, however, has not been made for properties acquired by

41. Clause 2 of the amending bill.
42. Legal Correspondent, "Hyderabad; 8 pleas filed against Dharani", *Hans News Service,* Dec. 17, 2020, *available at*: https://www.thehansindia.com/telangana/hyderabad-8-pleas-filed-against-dharani-662229 (last visited on March 23, 2022).
43. Express News Service, "Dharani portal: Telangana High Court extends stay on data collection", *The New Indian Express*, Dec. 4, 2020, *available at*: https://www.newindianexpress.com/states/telangana/2020/dec/04/dharani-portal-telangana-high-court-extends-stay-on-data-collection-2231640.html (last visited on March 23, 2022).
44. Sparsh Upadhyay, ""State Seeking Aadhaar Details 'A Clever ploy'": Telangana High Court Orders Deletion of Aadhaar, Caste Details Clause From Properties Registration", Dec 19, 2020, *available at*: https://www.livelaw.in/news-updates/telangana-high-court-delete-aadhaar-caste-property-registration-dharani-portal-167427 (last visited on March 23, 2022).
45. Special Correspondent, "TREDA lauds Dharani, TS-bPass", *The Hindu,* Nov. 21, 2020*, available at*: https://www.thehindu.com/news/cities/Hyderabad/treda-lauds-dharani-ts-bpass/article33151305.ece (last visited on March 23, 2022).
46. Hans News Service, "Hyderabad: Dharani sparking fears, charges Congress leader Gudur Narayana Reddy", *The Hans India,* Oct. 10, 2020, *available at*: https://www.thehansindia.com/news/cities/hyderabad/hyderabad-dharani-sparking-fears-charges-congress-leader-gudur-narayana-reddy-650514 (last visited on March 23, 2022); Hans News Service, "Clean the mess created by Dharani portal: BJP to Telangana government", *The Hans India*, Dec 19, 2020, *available at*: https://www.thehansindia.com/telangana/clean-the-mess-created-by-dharani-portal-bjp-to-telangana-government-662684 (last visited on March 23, 2022).
47. Express News Service, "Revenue employees in Telangana flag issues in Dharani portal", *The New Indian Express*, Dec. 17, 2020, *available at*: https://www.newindianexpress.com/states/telangana/2020/dec/17/revenue-employees-in-telangana-flag-issues-in-dharani-portal-2237400.html (last visited on March 23, 2022).
48. Hans News Service, "Bhadrachalam: Tribals protest enlisting of non-tribals' properties on Dharani portal", *The Hans India*, Oct. 20, 2020*, available at*: https://www.thehansindia.com/telangana/bhadrachalam-tribals-protest-enlisting-of-non-tribals-properties-on-dharani-portal-652054, (last visited on March 23, 2022); Special Correspondent, "Tribals stage protest against LRS in Scheduled Area", *The Hindu,* Oct. 19, 2020, *available at*: https://www.thehindu.com/news/national/telangana/tribals-stage-protest-against-lrs-in-scheduled-area/article32894442.ece (last visited on March 23, 2022); TNN, "Dharani not to harm STs' interests in Agency areas, Telangana govt tells high court", *The Times of India,* Dec. 20, 2020, *available at*: https://timesofindia.indiatimes.com/city/hyderabad/dharani-not-to-harm-sts-interests-in-agency-areas-govt-tells-high-court/articleshow/79818595.cms (last visited on March 27, 2022).
49. Koride Mahesh, Registration of all waqf, endowment land banned in Telangana, *The Times of India*, Sep. 20, 2020, *available at*: https://timesofindia.indiatimes.com/city/hyderabad/registration-of-all-waqf-endowment-land-banned-in-telangana/articleshow/78069731.cms (last visited on March 23, 2022).

notarised documents. Despite an assurance by the Chief Minister in the Assembly at the time of the Act's passing,[50] such protection was not extended to these properties.

The government also notified the Telangana Regularization of Unapproved and Illegal Layout Rules, 2020[51] which provided a one-time procedure for plot owners to regularise their properties in approved/illegal layouts after paying fines. The rules replaced a similar framework that had been in place since 2015.[52]

Goods and Services Tax

Article 246A empowers state legislatures to enact laws on goods and services tax imposed by states, subject to supply of goods or services that takes place in the course of inter-state trade or commerce. In pursuance of this, Telangana legislature enacted the Goods and Services Tax Act, 2017.[53] In 2020, the legislature enacted two amendments to this statute.[54]

Firstly, the Telangana Goods and Services Tax (Amendment) Act, 2020[55] carried out extensive amendments. In order to curb "fake registrations" Aadhaar was made mandatory for registrations under the Act. Prior to the amendment, refunds under the GST regime entailed a "twin refund sanctioning authority of the central and state tax officers."[56] The amendment replaced this system with a single authority by amending section 54 of the principal Act. The Amending Act carried out the following amendments to the principal Act:

a. Allowing certain classes of taxpayers to file returns once in a year
b. Constituting a national appellate authority for advance ruling, and introducing enabling provisions incidental to the constitution of the authority
c. Providing alternative composition scheme for suppliers of services and mixed suppliers
d. Permitting taxpayers to transfer amount from one head another in the cash ledger
e. Provision for charging interest only on the net tax payment in cash
f. Enabling provisions that allow for the extension of certain filing deadlines for annual returns
g. Empowering the anti-profiteering authority to impose a penalty that is equivalent to 10 percent of the profiteered amount
h. Retrospectively exempting "Uranium Ore Concentrate" from the state tax

The second amendment to the principal Act[57] was made following recommendations made by the GST council in December 2019. Furthermore, some changes were suggested by the government of India to

50. *Ibid.*
51. Telangana Regularization of Unapproved and Illegal Layout Rules, 2020, G.O.Ms.No.131 MA, dated Aug. 31, 2020.
52. Telangana Regularisation of Unauthorizedly constructed buildings and buildings constructed in deviation of the sanctioned plan Rules, 2015, G.O.MS.No.152, MA & UD Department, dated Nov. 2, 2015.
53. Act 23 of 2017.
54. The Telangana Goods and Services Tax (Amendment) Act, 2020 (Act 3 of 2020) and the Telangana Goods and Services Tax (Second Amendment) Act, 2020 (Act 11 of 2020).
55. Act 3 of 2020.
56. PTI, "Single Authority for sanctioning, processing refunds likely by August", *The Economic Times*, May 26, 2019, *available at*: https://economictimes.indiatimes.com/news/economy/policy/single-authority-for-sanctioning-processing-gst-refunds-likely-by-august/articleshow/69502859.cms?from=mdr (last visited on March 23, 2022).
57. Telangana Goods and Services Tax (Second Amendment) Act, 2020 (Act 11 of 2020).

the principal Act in light of the pandemic. The latter was made to enable the government to extend "time limits for actions which could not be complied with due to force majeure".[58] Some other significant changes included "easing the conditions of eligibility of opting to pay tax under composition scheme, delinking of invoice from debit note for availing input tax credit[59] [and] simplifying cancellation of voluntary registrations".[60] In addition, the Amending Act extended time limits for making orders to remove difficulties in implementation of the Act from three years to five years.[61]

Civil and Criminal Courts

The state legislature amended certain laws pertaining to civil and criminal procedure, including the extension of pecuniary jurisdiction. Entry 3 of the state list deals with "…fees taken in all courts except the supreme court" and entry 95 deals with "jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List". Furthermore, entry 11A of the concurrent list deals with "Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts."

The legislature passed the Code of Criminal Procedure (Telangana Amendment) Bill, 2020[62] on October 14, 2020. The bill sought to amend section 441 of the Code of Criminal Procedure, 1973 which deals with bond of accused and sureties. The amended provision empowers the police officer or court, as the case may be, to impose a fine not exceeding the prescribed amount in the surety bond, "in case the surety fails to produce the accused on the date fixed by the Court in grave or serious offences". The amending bill also sought to amend form No. 45 of the second schedule of the principal Act to reflect the amendment to section 441. These amendments were introduced following recommendations of the high court of Telangana.[63] Since the amending bill sought to amend a union legislation, the bill, after being passed by both the Houses of the legislature, was reserved by the governor for presidential assent under article 254(2) of the Constitution, as criminal procedure[64] and judicial proceedings[65] are matters enumerated in the concurrent list of the seventh schedule. The bill did not receive presidential assent in 2020.

On September 14, 2020, the legislature enacted the Telangana Civil Courts (Amendment) Act, 2020[66] (Civil Courts Act) and the Telangana Court-Fees and Suits Valuation (Amendment) Act, 2020[67] (Court-Fees Act). The Civil Courts Act extended the pecuniary jurisdiction of district courts from twenty-five lakhs to thirty-five lakhs. The Court-Fees Act amended the principal Act to allow for electronic payment and refund of court fees. The Amending Act also merged "Court Fee and Process Fee in a single transaction in the Commercial Courts."[68]

58. *Id.* s. 12 inserting s. 168A in the Telangana Goods and Services Act, 2017 (Act 23 of 2017).
59. *Id.* s. 7 amending s. 31 of the Telangana Goods and Services Act, 2017.
60. *Id.* s. 5 amending s. 29 of the Telangana Goods and Services Act, 2017.
61. *Id.* s. 13 amending s. 172 of the Telangana Goods and Services Act, 2017.
62. L.A. Bill 22 of 2020.
63. Code of Criminal Procedure (Telangana Amendment) Act, 2020 (L.A. Bill 22 of 2020), Statement of Objects.
64. The Constitution of India, 1950, Entry 2, List III, Schedule VII.
65. The Constitution of India, 1950, Entry 12, List III, Schedule VII.
66. Act 18 of 2020.
67. Act 17 of 2020.
68. L.A. Bill 17 of 2020, Statement of Objects and Reasons.

It must be noted that all three bills discussed in this section were introduced on the recommendations of the high court of Telangana.

State Finances

The laws discussed in this section were a result of the pandemic-induced financial hit that the state government had taken. Both these legislations were first promulgated as ordinances. The state is competent to enact legislation pertaining to the state's public debt by virtue of entry 43 in list two of the seventh schedule. While the first statute dealt with increasing fiscal deficit limits, the second statute dealt with deferring salaries, pensions and other payments. The state legislature is competent to enact laws dealing with salaries and allowances of members and presiding officers of both houses of the legislature[69] and ministers.[70] The legislature can also make laws on state public services[71] and state pensions.[72]

The union government had permitted states to increase borrowing limits under the Fiscal Responsibility and Budget Management Acts of the respective states. The government first promulgated an ordinance[73] amending the Telangana Fiscal Responsibility and Budget Management Act, 2005. The ordinance was eventually replaced by an Act of the legislature[74] on September 19, 2020. The Act made an "additional fiscal deficit of 1435 crore" permissible "over and above 3.25% of the GSDP as a one-time special dispensation".

This additional fiscal deficit was permissible only for the financial year of 2019-2020, and the Amendment Act was given retrospective effect from January 1, 2020. The amendment also allowed government to exceed fiscal deficit limits for 2020-2021 from three percent to five percent. The Amending Act also increased the limit on amount of annual incremental risk weighted guarantees from 90 percent of total revenue receipts to 200 percent.

It must be noted that these amendments were carried out only after the union "permitted" states to exceed borrowing limits.[75] Furthermore, one percent of the two percent increase in borrowing limit was only permissible if states carried out "reforms" in areas of urban local body reforms, portability of ration cards, ease of doing business and power-sector reforms. Except for power-sector reforms, Telangana reportedly completed all reforms.[76]

As part of the reform-linked borrowing, 0.25% of the increased borrowing limit was linked to carrying out "ease of doing business reforms". This entailed: Completion of first assessment of 'District Level

69. The Constitution of India, 1950, Entry 38, List II, Schedule VII.
70. The Constitution of India, 1950, Entry 40, List II, Schedule VII.
71. The Constitution of India, 1950, Entry 41, List II, Schedule VII.
72. The Constitution of India, 1950, Entry 42, List II, Schedule VII.
73. Telangana Fiscal Responsibility and Budget Management (Amendment) Ordinance, 2020 (Ordinance 3 of 2020).
74. Telangana Fiscal Responsibility and Budget Management (Amendment) Act, 2020 (Act 16 of 2020).
75. Asit Ranjan Mishra, "Govt raises states' borrowing limits for FY21 to 5% of GSDP from 3% now", *Mint*, May 17, 2020, *available at*: https://www.com/news/india/govt-raises-states-borrowing-limits-for-fy21-to-5-of-gdp-from-3-5-now-11589701382466.html (last visited on March 23, 2022).
76. PTI, "Telangana completes urban local bodies reforms; gets nod for Rs 2,508 cr additional borrowings", *The Economic Times*, Jan. 07, 2021, *available at:* https://economictimes.indiatimes.com/news/economy/finance/telangana-completes-urban-local-bodies-reforms-gets-nod-for-rs-2508-cr-additional-borrowings/articleshow/80153542.cms (last visited on March 23, 2022).

Business Reform Action Plan', elimination of the requirements of renewal of registration certificates/ approvals/licences obtained by businesses under certain laws[77], implementation of computerised central random inspection system under Acts pertaining to pollution control and labour protections[78].

The state government issued a series of government orders eliminating renewal requirements for businesses under various statutes[79]. The state had already put in place "computerised systems of Risk Assessment based Inspections with random allocation of Inspecting Officers" since 2015.[80] On July 14, 2020, the government notified[81] a new scheme of computerised random inspection system for thirteen different statutes. This notification superseded previous notifications on the scheme. Telangana had completed the ease of doing business reforms by December 2020.[82]

On March 30, 2020, the state government ordered[83] "austerity measures" due to the slowdown caused by pandemic. These measures were primarily focused on deferring payments, including pensions, salaries of government employees, ministers, elected representatives of the legislature and local bodies. The salary cuts varied depending on the grade of employees. On June 15, the Telangana high court called these measures "prima facie illegal" as the government order was not backed by statute.[84] In response, the government promulgated an ordinance on June 16[85] empowering the state government to defer due payments, pensions and salaries. The Telangana Disaster and Public Health Emergency (Special Provisions) Act, 2020,[86] which replaced the ordinance, empowered the government to defer due payments,[87] pensions or remunerations to pensioners, government employees, other individuals or institutions for "such period for the management of the situation arising out of a disaster or public

77. The laws outlined by the union government were: the Shops & Establishment Act, the Contracts Labour (Regulation and Abolition) Act, 1970, the Factories Act, 1948, the Legal Metrology Act, the Inter-State Migrant Workmen (RE&CS) Act, 1979, Drug Manufacturing/ Selling/ Storage License, Trade License issued by the Municipal Corporations. See, Press Information Bureau, "Reform linked borrowing permissions are facilitating Ease of Doing Business reforms", Ministry of Finance, Dec. 20, 2020 *available at:* https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1682118 (last visited on March 23, 2022).
78. See, *Id.* The laws listed by the union government were: the Equal Remuneration Act, 1976 The Minimum Wages Act, 1948, the Shops and Establishments Act, the Payment of Bonus Act, 1965, the Payment of Wages Act, 1936, the Payment of Gratuity Act, 1972 The Contract Labour (Regulation and Abolition) Act, 1970 The Factories Act, 1948, the Boilers Act, 1923, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Legal Metrology Act, 2009 and Rules.
79. Automatic renewals under Legal Metrology Act, 2009 (*See*, Notification No. 3651/T/2020-2, Office of the Controller, Legal Metrology, dated Oct. 2, 2020); automatic renewals under the Contracts Labour (Regulation and Abolition) Act, 1970 (*See*, G.O.Rt.No.288, dated Sep. 17, 2020); automatic renewals under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (*See*, G.O.Rt.No. 289, dated Sep. 17, 2020); renewal of trade licenses under Telangana Panchayat Act, 2018 (*See*, G.O.Ms.No. 52, dated Nov. 26, 2020); automatic renewals under Shops & Establishment Act was already in place before the reform-linked borrowing arrangement (G.O.Ms.No.17, dated June 13, 2019).
80. *See,* G.O.Ms.No.31, L.E.T. & F. (Lab) Department, dated Dec. 10, 2015; G.O.Ms.No.7, L.E.T. & F. (Lab) Department, dated April 21, 2017; G.O.Ms.No.29, L.E.T. & F. (Lab) Department, dated July 24, 2017.
81. G.O.Ms.No. 13, L.E.T. & F. (Lab-I) Department, dated July 14, 2020.
82. *Supra*, note 77.
83. G.O.Ms.No.27, Finance (TFR) Department, dated March 30, 2020.
84. TNM Staff, "Deferring pensions amid Covid-19 pandemic is 'illegal', Telangana HC tells state govt, *The News Minute*, June 16, 2020, *available at:* https://www.thenewsminute.com/article/deferring-pensions-amid-covid-19-pandemic-illegal-telangana-hc-tells-state-govt-126626 (last visited March on 23, 2022).
85. Ordinance 2 of 2020.
86. Act 14 of 2020.
87. *Id*. s. 3.

health emergency".[88] The Act requires the government to notify, within six months from the date of deferment, the manner in which such deferred payments shall be completed.[89]

Administrative Ease

The state legislature enacted certain statutes that can be classified broadly as being motivated by administrative convenience.

Article 191 of the Constitution empowers state legislatures to, by law, declare certain offices of profit. The holders of these offices are protected from being disqualified from being members of the state legislature. The government promulgated the Telangana Payment of Salaries and Pension and Removal of Disqualifications (Amendment) Ordinance, 2019[90] on December 4, 2019 to amend the principal Act and incorporate 29 offices, the holders of which would not be disqualified from being members of the legislative assembly or the legislative council. The ordinance was later replaced by an Act[91] on March 21, 2020.

The Telangana Lokayukta (Amendment) Act, 2020[92] was also first promulgated as an ordinance[93] on December 12, 2019. While the principal Act provided that only a retired chief justice of high court may be appointed Lokayukta, the Amending Act allowed for the appointment of a retired judge of a high court as Lokayukta as well. The government cited "non-availability of retired Chief Justice of a High Court" as the reason for the amendment. It is important to note that the Lokayukta was appointed within a week of the ordinance being promulgated.[94]

On June 20, 2019, the government promulgated the Telangana Public Employment (Regulation of Age of Superannuation) (Amendment) Ordinance, 2019[95] which was later replaced by an Act.[96] The Act increased the age of retirement from 58 to 65 years for teaching faculty of government Ayurveda, Unani and Homeopathy Medical Colleges.[97]

The legislature also repealed[98] Telangana Self Help Groups Women Co-Contributory Pension (Repeal) Act, 2009. The principal Act provided for a co-contributory pension scheme for old-age income security. The scheme required a contribution of one rupee per day each from members between the age group of 18-59 as well as the government. Beneficiaries would be entitled to a pension of 500 rupees per month when they reach the age of 60. The state government's 'Aasara' pension scheme earlier covered only those above the age of 65. Beneficiaries under the scheme were entitled to 2016 rupees.

88. *Id.* ss. 4 and 5.
89. *Id* s. 6.
90. Ordinance 7 of 2019.
91. Act 4 of 2020.
92. Act 5 of 2020.
93. Ordinance 8 of 2019.
94. ANI, "Telangana govt appoints state's Lokayukta, Upa Lokayukta", *Business Standard*, Dec 20, 2019, available at: https://www.business-standard.com/article/news-ani/telangana-govt-appoints-state-s-lokayukta-upa-lokayukta-119122000162_1.html (last visited on March 23, 2022).
95. Ordinance 4 of 2020.
96. Act 15 of 2020.
97. Telangana Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 1984 (Act 23 of 1984), s. 3.
98. Telangana Self Help Groups Women Co-Contributory Pension (Repeal) Act, 2020 (Act 6 of 2020).

The state government had announced that the age of eligibility for the scheme would be reduced to 57,[99] therefore the co-contributory scheme was inadequate and not necessary anymore. Accordingly, the law was repealed. However, implementation of the age relaxation did not happen in 2020.[100] Since the Act was repealed before the rollout of the revised Aasara pension scheme, the status of beneficiaries of the co-contributory pension scheme was unclear.

Miscellaneous

The state government promulgated an ordinance[101] for the establishment of five private universities in the state. The ordinance amended the schedule to the Telangana State Private Universities (Establishment and Regulation) (Amendment) Act, 2018.[102] The ordinance was eventually replaced with an Act of the legislature.[103]

On March 14, the government issued its first order under section 2 of the Epidemic Diseases Act, 1897[104] and Chapter-III of the National Disaster Management Act, 2005 (hereinafter NDMA). It ordered the closure of educational institutions, cinema halls, amusement parks, gyms, museums, etc. It also banned large gatherings, public rallies, sports events and allocated Rs. 500 crores for pandemic response.[105] This operation of the order was extended till March 31 from March 21.[106]

The government made additional monetary allocations throughout the year for various purposes including quarantine, sample collection, procurement of drugs,[107] essential equipment,[108] welfare for migrants,[109] police *bandobust* and police implementation of lockdown.[110] On March 21, the government also notified the Telangana Epidemic Diseases (COVID-19) Regulations, 2020[111] under the Epidemic Diseases Act, 1897. On the next day, the government ordered a state-wide lockdown[112] to be in force till March 31, 2020. The lockdown was extended till April 14, 2020,[113] May 7, 2020,[114] May 31[115] and

99. Special Correspondent, "Cut in eligibility age to benefit 6.6 lakh new Aasara pensioners", *The Hindu*, March 14, 2020, *available at*: https://www.thehindu.com/news/national/telangana/cut-in-eligibility-age-to-benefit-66-lakh-new-aasara-pensioners/article31069801.ece (last visited on March 23, 2022).
100. DC Correspondent, "'Telangana CM KCR's promise of Aasara age relaxation yet to become reality", Deccan Chronicle, July 11, 2021, *available at*: https://www.deccanchronicle.com/nation/in-other-news/110721/telangana-cm-kcrs-promise-of-aasara-age-relaxation-yet-to-become-re.html (last visited on March 23, 2022); R Avadhani, Aasara pensions from 57 itself from next financial year, *The Hindu*, March 07, 2022, *available at*:https://www.thehindu.com/news/national/telangana/aasara-pensions-from-57-itself-from-next-financial-year/article65201088.ece (last visited on March 23, 2022).
101. Ordinance 1 of 2020.
102. Act 11 of 2018.
103. The Telangana State Private Universities (Establishment and Regulation) (Amendment) Act, 2020 (Act 13 of 2020).
104. Act 3 of 1897.
105. G.O.Rt.No. 4, dated March 14, 2020.
106. G.O.Rt.No. 6, dated March 19, 2020.
107. G.O.Rt.No. 378, dated Sep. 01, 2020.
108. G.O.Rt.No. 5, dated March 19, 2020.
109. G.O.Rt.No. 14, dated March 30, 2020.
110. G.O.Rt.No. 9, dated March 30, 2020; G.O.Rt.No. 10, dated March 30, 2020; G.O.Rt.No. 11, dated March 30, 2020; G.O.Rt. No. 12, dated March 30, 2020.
111. G.O.Ms.No.13, dated March 21, 2020.
112. G.O.Ms.No.45, General Administration Department (GAD), dated March 22, 2020.
113. G.O.Ms.No.54, General Administration (COVID) Department, dated March 28, 2020.
114. G.O.Ms.No.60, GAD, dated April 19, 2020.
115. G.O.Ms.No.68, GAD, dated May 18, 2020.

June 7.[116] On June 4, the government ordered a phased reopening of areas outside containment zones with effect from June 8.[117] The government also ordered a 'paid holiday' under the Telangana Shops and Establishments Act, 1988 till March 31, 2020.[118]

The government issued further clarifying orders on March 23, prohibiting any shops/establishments except hospitals and pharmacies to be open after 6:30 PM. Individuals were also only allowed to go to shops/establishments within a 3 km radius of their homes.[119] Such granular rules, regulating the movement of citizens were unprecedented. The fact that such large-scale surveillance and restrictions were placed through mere government orders remains worrisome.

As a welfare measure, the government also ordered the provision of 12 kg rice per person in the family to all the food security cardholders in the state.[120] Besides this, food-security card holding families would be entitled to one-time financial support of rupees 1500.[121] The March 22 G.O.[122] also ordered that private establishments should make full payments of wages/salaries during the lockdown period. Violators were threatened with action under the Epidemic Diseases Act.

In another government order,[123] migrant workers stranded in Telangana due to lockdown were extended certain welfare protections including 12 kg of rice per person (or 12 kg of atta as per need) free of cost and rupees 500 per person in cash. Migrant workers were reportedly surveyed by the government of Telangana before these measures were announced; they were called "partners in development of Telangana". District collectors were also directed to ensure cooked food (where raw ration was not possible) and essentials such as access to shelter, water and medical care. The government extended these protections to all those who did not possess a ration card issued by the government of Telangana. It also provided a subsidy to GHMC for setting up kitchens at worksites for welfare of building and construction workers.[124] The government ordered property owners/landlords to defer collecting rent from their tenants for a period of three months, and then recover the rent in instalments.[125] This order was purportedly made under the NDMA.

The government also relaxed certain provisions of Telangana financial code to ensure that swift procurement was not constrained by public procurement norms.[126] It also provided a one-time "Chief Minister's Special Incentive" to certain state government employees, especially those working in medical and health services, sanitation, sewerage workers and water linemen and police.[127]

In dealing with the fall-out of the lockdown on school education, the government first ordered regulation of school fees of private schools. It prohibited fees increases and required that schools only

116. G.O.Ms.No.72, GAD, daated May 31, 2020.
117. G.O.Ms.No.75, GAD, dated June 04, 2020.
118. G.O.Rt.No. 160, dated March 23, 2020.
119. G.O.Ms.No. 46, dated March 23, 2020.
120. G.O.Rt.No. 8, dated March 23, 2020.
121. Para 13, G.O.Ms.No.45, dated March 22, 2020.
122. *Ibid*.
123. G.O.Rt.No.13, dated March 30, 2020.
124. G.O.Ms.No. 11, dated May 16, 2020.
125. G.O. Rt. No. 184, dated April 23, 2020.
126. G.O.Ms.No. 29, dated April 04, 2020.
127. G.O.Ms.No. 31, dated April 07, 2020 and G.O.Ms.No.33, dated April 21, 2020.

charge tuition fees on a monthly basis.[128] By a government order, the government promoted all students from Class I to Class IX to the next higher grade without examinations.[129]

The government fixed ceiling rates chargeable by private hospitals for treatment and private laboratories for treatment.[130] It also revised rates for conducting COVID–19 tests in approved private labs,[131] carried out various pandemic-related hiring of medical staff as well as outsourcing of ancillary services.[132] In August 2020, the state notified a standard operating procedure for international arrivals. These primarily pertained to quarantine period and isolation arrangements for international arrivals in the state of Telangana.[133] On the orders of the supreme court, the state government constituted an "expert team of Doctors and other experts for inspection, supervision and guidance of Government hospitals".[134]

By December 11, the state had shifted its focus away from merely addressing the fallout of lockdown and pandemic towards vaccines. It issued an advisory and outlined a coordination mechanism for deployment of COVID-19 vaccine.[135] It also ordered the formation of district and mandal-level committees for vaccine awareness raising and coordination.[136]

Resolutions

The state legislature adopted a total of four resolutions in the year. The rules of procedure and conduct of business of both houses of the legislature[137] define a resolution "as a motion for the purpose of discussing a matter of public interest" which is in "the form of a specific recommendation or a declaration of opinion by the House". Furthermore, the rules set out what a resolution may entail:

> "A resolution may be in the form of a declaration of opinion or recommendation or maybe in the form so as to record either approval or disapproval by the [House] of an act or policy of Government or convey a message or commend, urge or request an action or call attention to a matter or situation for consideration by Government or in such other form as the Speaker may consider appropriate."[138]

The legislature first adopted a resolution[139] ratifying the constitutional amendment[140] to article 334 which extended reservations for scheduled castes and scheduled tribes in Lok Sabha and legislative assemblies by another ten years. The constitutional amendment did not extend reservations for Anglo-

128. G.O.Rt.No. 46, dated April 21, 2020.
129. G.O.Rt.No. 54, dated May 05, 2020 and G.O.Ms.No. 10, dated June 10, 2020.
130. G.O.Rt.No.248, dated June 15, 2020.
131. G.O.Rt.No.491, dated Nov. 18, 2020 and G.O.Rt.No. 539, dated Dec. 21, 2020.
132. G.O.Rt.No. 888, dated June 20, 2020; G.O.Rt.No. 902, dated June 25, 2020; G.O.Rt.No.1092, dated Oct. 15, 2020 and G.O.Rt. No. 1068, dated Sep. 28, 2020.
133. G.O.Ms.No.115, dated Aug. 26, 2020.
134. G.O.Rt.No. 439, dated Oct. 20, 2020.
135. G.O.Ms.No. 58, dated Dec. 11, 2020.
136. G.O.Ms.No. 57, dated Dec. 11, 2020.
137. *See*, rule 2(1)(s) of the Rules of Procedure and Conduct of Business in the Telangana Legislative Assembly (Assembly Rules) and 2(1)(v) of the Rules of Procedure and Conduct of Business in the Telangana Legislative Council (Council Rules).
138. Rule 77 of Council Rules and Rule 78 of Assembly Rules.
139. Telangana Legislative Assembly, Government Resolution, March 15, 2020.
140. Constitutional (One Hundred and Fourth Amendment) Act, 2019.

Indians in the same manner. Article 368 requires ratification by at least half of state legislatures when a constitutional amendment deals with the representation of states in parliament.[141] However, the resolution, in this case, was belated, as the amendment was already ratified by half of the states. It came into force on January 21, 2020. The reservations would have ceased to have effect on January 25, 2020.

The second resolution adopted by the legislature was also its most elaborate. Adopted in the middle of protests against the Citizenship Amendment Act, 2019 (CAA) National Population Register (NPR) and National Register of Citizens (NRC), the resolution[142] provided a wide-ranging list of objections against tinkering "with the inclusive and non-religious nature of Indian citizenship". The resolution also warned against the dangers of insisting on documentary proof of citizenship. Besides technical and legal arguments against the implementation of CAA, NPR and NRC, the resolution also cited values of multiculturalism, diversity, secularism and equality before law as grounds for opposition against the law. Unlike resolutions of other state legislatures, the Telangana legislature neither demanded the inclusion of Muslims in the CAA nor for the statute's repeal. Instead, it demanded that the CAA be amended to remove "references to any religion or any foreign country". It also urged the state government to take all "necessary steps to safeguard the people of Telangana from exercises such as NPR and NRC".

Non-statutory resolutions have no force of law, but such resolutions are clear expressions of the states' representative body. Furthermore, it must be noted that implementation of citizenship laws, as well as enumeration of the population register, would heavily depend on state employees and cooperation from the state government. In this context, such resolutions are useful constitutional mechanisms to express disagreement and non-cooperation with the union government.

The third resolution was adopted[143] by the legislature on September 8 2020 demanding posthumous Bharat Ratna for former Prime Minister P. V. Narasimha Rao. The resolution was part of the state government's observation of Rao's centenary. Rao was also Chief Minister of undivided Andhra Pradesh and a "son of Telangana". The resolution also demanded that the Central government "establish his statue and portrait in parliament complex" and to name Hyderabad Central University after him.

On September 15, 2020, the legislature adopted a resolution opposing the Union government's proposed amendments to the Electricity Act, 2003. The resolution stated that the bill was "against the Federal spirit, aimed at usurping the State's rights, adversely impacting the interests of farmers and the poor". The proposed amendments sought to change the manner in which electricity tariff is set, subsidies are given, and how distribution companies are regulated. Electricity is a subject in the concurrent list[144], while taxes on the consumption of electricity is a state subject.[145] The 2003 Act allowed states a significant degree of autonomy in the management of their power sector, especially with respect to providing free electricity to farmers and cross-subsidising between commercial and low-income domestic consumers.

141. The Constitution of India, clause (d) of the proviso to art. 368(2).
142. Telangana Legislative Assembly, Government Resolution on CAA, NPR and NRC, March 16, 2020.
143. Telangana Legislative Assembly, Government resolution dated Sep. 8, 2020 *available at:* https://legislation.telanganalegislature.org.in//PreviewPage.tsl?filePath=basePath&fileName=ResolutionOrdinance/Files/Eng_ResolutionE_84.pdf (last visited March 23, 2022).
144. The Constitution of India, Entry 38 of Concurrent List, Schedule VII.
145. The Constitution of India, Entry 53 of State List, Schedule VII.

The state legislature used resolutions as a means of communicating with the Union government. It especially chose resolutions when conveying disagreement, asserting states' rights and making demands on the Union government.

Conclusion

A significant portion of the state's statutory attention was spent in digitisation, land records and land titling. Despite an unprecedented pandemic, statutory law-making did not really address it. Instead, most of the pandemic response (including fallouts of the pandemic in terms of welfare, healthcare and education) was carried out through executive instruction under the Epidemic Diseases Act, 1897. The only time statutory law-making seemed to have been impacted by the pandemic was in creating enabling provisions for the deferral of salaries. One also sees an obsession with making statutory processes online[146] and automating statutory procedures. This was not only the case with Dharani portal, land registration overhaul, building approvals or layout regularisation but also payment of court fees. It must also be noted, that, despite its wide-ranging welfare programmes, the state government has preferred the route of executive instruction and avoided establishing statutory rights for beneficiaries. In fact, in the one instance where there was a statutory duty on the government (co-contributory pension), the state repealed the law and migrated the beneficiaries to a (more generous) non-statutory scheme.

The state's use of resolutions—despite their non-binding nature—is interesting. The state used this constitutional device as an expression of the state's will and as a means of communicating with the union government.

146. Besides the labour inspection system and auto-renewal systems, the government also made online applications/approval mandatory for: registration/renewal certificates under Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 (G.O.Ms.No. 48, dated Oct. 20, 2020); issuing various Fertilizer Licences to facilitate (G.O.Ms.No. 38, dated Oct. 01, 2020); issuing the Seed Licences (G.O.Ms.No. 40, dated Oct. 01, 2020); utilizing the services of Plant Protection under Agriculture Department (G.O.Ms.No. 41, dated Oct. 01, 2020); Certificate for Approval of DG sets and issuing No Objection Certificate for new Cinema buildings and Electrical Certificate in Form-D for new Cinema buildings (G.O.Ms. NO.19, dated Dec. 10, 2020) registration and renewal of health facilities under Telangana Allopathic Private Medical Care Establishments (Registration and Regulation) Act, 2002 (G.O.Ms.No.47, dated Oct. 20, 2020); payment of contributions under the Telangana Labour Welfare Fund Act, 1987 and the Telangana Labour Welfare Fund Rules, 1988 (G.O.Ms.No. 28, dated Nov. 12, 2020); Registration of Contractors (G.O.Ms.No. 21, dated Aug. 08, 2020).

THE NATIONAL CAPITAL TERRITORY OF DELHI

Pranav Verma[1]

Introduction

This survey analyses the legislative output of the Delhi Assembly for 2020, through both quantitative and qualitative lenses. During the year, the Assembly produced only one substantive legislation, and much of the business of the government of the National Capital Territory of Delhi was transacted through subordinate legislations such as regulations, rules, notifications, circulars, orders, and other executive instruments: 466 notifications/circulars; 1 order; and 20 rules.

Since the primary legislative business of the state was displaced by delegated legislations, this survey also examines such delegated legislations and measures them against the well-settled prescriptions on delegated law-making which emerge from a catena of judicial pronouncements.

The analysis also acknowledges that 2020 marked the onset of the pandemic, the emergency nature of which—coupled with the uncertain power-sharing arrangements between the lieutenant governor (LG) and the Delhi government—made the latter primarily prefer subordinate legislations to manage its COVID-19 response. In this light, it is noted that the Delhi government preferred a primary legislation already available to it to promulgate subordinate legislations, for example, the Epidemic Diseases Act, 1897.

Finally, the survey examines subordinate legislations made under Article 309 of the Constitution which explicitly provides that a legislation made by the state assembly will have primacy over any rules made by the President/Governor, as far as conditions governing the recruitment or service of state employees are concerned. Given the history of disputes over law-making on several issues between the Delhi Government and the LG, it worthwhile to examine the extent to which the Delhi Government exercised what was placed exclusively in its domain by the Constitution.

Quantitative Analysis: Legislations Notified in 2020

During 2020, a total of six legislations were notified in the National Capital Territory (NCT) of Delhi, with the LG assenting to five bills, and the president of India assenting to one.[2] These were:

1. The Delhi Appropriation (No. 1) Act, 2020 (Delhi Act 1 of 2020);[3]

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2. The Delhi Urban Shelter Improvement Board (Amendment) Act, 2015 (Act 5 of 2020) was assented to by the president, while all the other five legislations were assented to by the LG.
3. The Delhi Appropriation (No. 1) Act, 2020 (Act 1 of 2020).

2. The Delhi Appropriation (No. 2) Act, 2020 (Delhi Act 2 of 2020);[4]
3. The Delhi Sports University Act, 2019 (also labelled the Delhi Act 1 of 2020);[5]
4. The Delhi Skill and Entrepreneurship University Act, 2019 (Delhi Act 4 of 2020);[6]
5. The Delhi Urban Shelter Improvement Board (Amendment) Act, 2015 (Delhi Act 5 of 2020);[7] and
6. The Delhi Goods and Services Tax (Amendment) Act, 2020 (Delhi Act 6 of 2020).[8]

However, three of the above legislations were passed in the sessions of the Assembly preceding the year 2020—both, the Delhi Sports University Act, 2019[9] and the Delhi Skill and Entrepreneurship University Act, 2019[10] were passed by the Assembly in 2019 and received the LG's assent in 2020; while the Delhi Urban Shelter Improvement Board (DUSIB) (Amendment) Act, 2015[11] was passed by the Assembly in 2015 and receive the assent of the LG in 2020.

The Delhi Sports University Act, 2019 sought to set up a sports university in the NCT of Delhi to facilitate sports studies and research in sports education.[12] The Delhi Skill and Entrepreneurship University Act, 2019 aimed to provide "quality education in applied sciences and skill education in various disciplines of education".[13] The Delhi Goods and Services Tax (GST) (Amendment) Act, 2020 was passed to further amend the Delhi Goods and Services Tax Act, 2017 to align the definition of "union territory" to make it consistent with the Jammu and Kashmir Reorganisation Act, 2019 and the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019; add the words "or services" after the words "of goods" in section 10(2)(a), (b), (c) and (d) of the principal Act; delink the date of issuance of a debit note from the date of issuance of the underlying invoice for availing input tax credit, etc.[14]

The DUSIB (Amendment) Act, 2015 aimed at rehabilitating those slum dwellers whose slums were set up in NCT of Delhi between March 31, 2002 and January 2, 2006. It got the LG's assent five years after the bill was first passed by the Assembly.[15] This marked the culmination of a long-drawn battle between the government and the LG, since the DUSIB (Amendment) Act, 2015 was one of the many legislations over which the LG had initially withheld assent, disputing the Assembly's competence to pass the legislation.[16] To place the controversy surrounding the said legislation, and the final resolution

4. The Delhi Appropriation (No. 2) Act, 2020 (Act 2 of 2020).
5. The Delhi Sports University Act, 2019 (Act 1 of 2020).
6. The Delhi Skill and Entrepreneurship University Act, 2019 (Act 4 of 2020).
7. *Supra* note 2.
8. The Delhi Goods and Services Tax (Amendment) Act, 2020 (Act 6 of 2020).
9. *Supra* note 5.
10. *Supra* note 6.
11. *Supra* note 2.
12. *Supra* note 5, Statement of Objects and Reasons.
13. *Supra* note 6, Statement of Objects and Reasons.
14. *Supra* note 8, also *see* Taxscan Team, "Delhi GST (Amendment) Act, 2020: Delhi Govt. notifies Fraudulent availment of ITC without Invoice or bill Cognizable and Non-bailable", *Taxscan*, Sep. 17, 2020, *available at*: https://www.taxscan.in/delhi-gst-amendment-act-2020-delhi-govt-notifies-fraudulent-availment-of-itc-without-invoice-or-bill-cognizable-and-non-bailable/74838/ (last visited on Dec. 3, 2021).
15. *Supra* note 2.
16. Mohammed Iqbal, "Three bills passed on day 1", *The Hindu*, June 24, 2015, *available at:* https://www.thehindu.com/news/cities/Delhi/three-bills-passed-on-day-1/article7348409.ece (last visited on Dec. 3, 2021); TNN, "Bills hanging fire for lack of LG's nod: Oppn", *The Times of India*, Feb. 6, 2016, *available at*: https://timesofindia.indiatimes.com/city/delhi/bills-hanging-fire-for-lack-of-lgs-nod-oppn/articleshow/50872543.cms (last visited on Dec. 3, 2021); Gaurav Vivek Bhatnagar, "Kejriwal claims centre obstructing his Govt.'s work, Says 'I am not a terrorist'", *The Wire*, Oct. 4, 2017, *available at*: https://thewire.in/politics/kejriwal-modi-lg-delhi-assembly (last visited on Dec. 3, 2021).

of the dispute, in context, it would be useful to briefly recapitulate how the law-making powers of the NCT of Delhi have only recently come to be somewhat clearly delineated.

The Law-making Powers of NCT of Delhi

Article 239AA of the Constitution provides for the NCT of Delhi to have an elected legislative assembly, and enjoins the LG to act on the "aid and advice" of the council of ministers headed by the chief minister.[17] It also places a limitation upon the legislative assembly with respect to enacting laws on three specific subject-matters in the state list—'land', 'police', and 'law and order'. In case of any difference of opinion between the LG and his ministers, it enables the LG to refer such disagreement to the president, by whose decision they are then bound to act. In rare situations, dictated by the urgency of the matter, the LG may proceed to give necessary directions without waiting for the president's decision.[18]

However, as far as referrals to the president are concerned, the LG cannot act in a "mechanical manner" in making such referrals, but should duly apply their mind so as not to refer every decision of the council of ministers to the president.[19] The supreme court has held that such referrals may be made for "substantial issues of finance and policy which impact upon the status of the national capital or implicate vital interests of the Union",[20] and not "every trivial difference" of opinion.[21] More importantly, it held that the LG has "not been entrusted with any independent decision-making power".[22]

A year later, in a subsequent decision, a two-judge bench of the supreme court further clarified that it is the union that shall have authority in respect of the Anti-Corruption Bureau and setting up inquiries under the Commissions of Inquiry Act, 1952; whereas the government of NCT of Delhi will have control over matters under the Electricity Act, Stamp Act, and the appointment of special public prosecutors. The two-judge bench was, however, split over the issue of control over 'services'.[23]

It is against this backdrop that, after a delay of five years, and with some kind of a demarcation of powers undertaken by the supreme court between the union and the government of NCT of Delhi, that the DUSIB (Amendment) Act 2020 was finally assented to by the president on August 18, 2020 and notified on October 5, 2020.[24]

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17. The Constitution of India, art. 293AA(4).
18. *Ibid.* A Constitution bench of the supreme court, in 2018, interpreted article 239AA and held that the LG is bound by the 'aid and advice' of the council of ministers headed by the chief minister, except for 'law and order', 'police', and 'land', see *State (NCT of Delhi)* v. *Union of India*, (2018) 8 SCC 501.
19. *State (NCT of Delhi)* v. *Union of India*, (2018) 8 SCC 501, at 248.18 (Misra, CJI).
20. *Id*. at 464 (Chandrachud, J.).
21. *Id*. at 475.21 (Chandrachud, J.)
22. *Id*. at 248.17 (Misra, CJI). Also *see* Pranav Verma, "Delhi Power Tussle: LG Is Flirting Dangerously Close to Contempt of Court', *The Wire*, Aug. 21, 2018, *available at*: https://thewire.in/law/delhi-power-tussle-lg-is-flirting-dangerously-close-to-contempt-of-court (last visited on Dec. 5, 2021).
23. *Government (NCT of Delhi)* v. *Union of India*, (2020) 12 SCC 259. The matter was then referred to a larger bench in *Government of NCT of Delhi* v. *Union of India,* Record of Proceedings, order dated Oct. 5, 2021, *available at*: https://main.sci.gov.in/supremecourt/2016/29357/29357_2016_Order_14-Feb-2019.pdf (last visited on Dec. 3, 2021). Subsequently, the matter has been adjourned five times (the latest adjournment was on Oct. 5, 2021), with the issue of control over 'services' remaining unresolved. See *Government of NCT of Delhi* v. *Union of India*, Record of Proceedings, order dated Oct. 5, 2021, *available at*: https://main.sci.gov.in/supremecourt/2016/29357/29357_2016_31_801_30518_Order_05-Oct-2021.pdf (last visited on Dec. 3, 2021).
24. *Supra* note 2.

Low Legislative Output, and Rise in Subordinate Legislations

If the legislations which were assented to in 2020 but actually passed by the Assembly in the preceding years are excluded, the legislative output of the Delhi Assembly for 2020 would be restricted only to the Delhi Appropriation (No. 1) Act, 2020;[25] the Delhi Appropriation (No. 2) Act, 2020;[26] and the Delhi GST (Amendment) Act, 2020.[27] Out of these, the two Appropriation Acts are not part of this survey as they are routinely passed in every Assembly's budget session. The substantive output of the Assembly for 2020 was limited to just one legislation—the Delhi GST (Amendment) Act, 2020[28]—adopted by voice-vote in the Assembly's first dession (fourth part on September 14, 2020).[29]

The Assembly had only eight sessions in the year. An output of one substantive legislation in eight sessions amounts to a productivity rate of 12.5 percent. This would make 2020 the second-most unproductive year for the legislative assembly of Delhi when compared with the past five years.[30]

However, the government's business continued to run apace through several subordinate legislations and executive instruments of the likes of notifications, circulars, orders, etc. In fact, it would appear that the volume of subordinate legislation notified more than makes up for the lack of legislative activity. Given that the pandemic commenced in 2020, it is also important to note that it is subordinate legislation and not primary enactments which formed the bedrock of the government's COVID-19 responses.

An examination of the available public records reveals that these subordinate legislations included about 466 notifications/circulars (spread across 21 government departments); 1 Essential Commodities Order; and 20 rules. These rules—excluding the rules made by the high court of Delhi regarding virtual hearings and video conferencing of court proceedings—were made under six primary legislations, apart from four rules made under article 309 of the Constitution. Both, the notifications/circulars and the rules, dealt with routine matters of day-to-day administration.[31] In substantive terms, the government's COVID-19 response was largely managed through two primary regulations, analysed in the next section of the survey.

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25. *Supra* note 3.
26. *Supra* note 4.
27. *Supra* note 8.
28. *Ibid.*
29. Legislative Assembly of the NCT of Delhi, "Session Reviews—Seventh Assembly", *available at*: http://www.delhiassembly.nic.in/review.htm (last visited on Dec. 1, 2021).
30. The lowest output was in 2018 at approximately six percent with two substantive legislations being passed out of 33 sittings of the Assembly. In 2019, the output stood at approximately 27 percent, with three substantive legislations being passed out of 11 sittings. In 2017, the output stood at approximately 24 percent, with five substantive legislations being passed out of 21 sittings. In 2016, the output stood at 20 percent, with three substantive legislations being passed out of 15 sittings. Finally, in 2015, the output stood at a record-high of 73 percent, with 19 substantive legislations being passed out of 26 sittings (out of which assent is awaited on eight bills; five were returned by the LG; and two were returned, re-introduced, and then assented to). See Bills in Delhi Legislative Assembly, *available at*: http://delhiassembly.nic.in/Legislation/billDetailsLeg.html (last visited on Dec. 3, 2021); and Session at a Glance, Delhi Assembly - Session Reviews, *available at*: http://www.delhiassembly.nic.in/review.htm (last visited on Nov. 26, 2021).
31. The department-wise notifications/circulars can be accessed from https://delhi.gov.in/departments.html (last visited on Jan. 27, 2022); and the rules promulgated can be accessed from the 'Acts and Rules' section *available at*: https://delhi.gov.in/ (last visited on Jan. 27, 2022).

Qualitative Analysis

Deviations from the Fundamental Principles Governing Delegated Legislations

The government's legal response to the COVID-19 pandemic came in the form of regulations issued in the exercise of the powers conferred under section 2 of the Epidemic Diseases Act, 1897.[32] No new legislation was enacted.

There were two primary regulations under the 1897 Act which formed the bedrock of the government's COVID-19 response, and all further orders were issued under the authority of these primary regulations. The Health and Family Welfare Department issued the Delhi Epidemic Diseases, COVID-19 Regulations, 2020[33] on March 12, 2020, and the Delhi Epidemic Diseases, (Management of COVID-19) Regulations, 2020[34] on June 13, 2020. These regulations were initially issued for a period of one year from the date of publication, but were later extended by another year through a notification dated October 14, 2021 by the LG.[35] The specific prescriptions governing the fundamental rules of delegated law-making are discussed below, and these regulations are analysed vis-à-vis such prescriptions.

Delegated Legislation Cannot Encroach into 'Essential Legislative Functions' (The Policy and Guidance Test)

It is a trite proposition of law that delegated legislation cannot transgress into the domain of 'essential legislative policy'. This principle requires the primary legislation to spell out the policy and set out the standards to guide the executive. The principle disallows the use of vague and general terms which confer an unfettered discretion upon the executive. It is not permissible for the legislature to confer upon the executive an uncanalised power to change or modify the legislative policy laid down by it, without reserving for itself any control over the subordinate legislation. Determining legislative policy is, thus, a function exclusively within the domain of the legislature, and cannot be delegated through subordinate legislation.[36]

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32. The Epidemic Diseases Act, 1897 (Act 3 of 1897).
33. Health and Family Welfare Department, Government of the National Capital Territory of Delhi, The Delhi Epidemic Diseases, COVID-19 Regulations, 2020, *available at*: http://health.delhigovt.nic.in/wps/wcm/connect/c05a8d804d883d25974cf7982ee7a5c7/NED+Act.pdf?MOD=AJPERES&lmod=-754584952&CACHEID=c05a8d804d883d25974cf7982ee7a5c7 (last visited on Jan. 26, 2022).
34. Health and Family Welfare Department, Government of National Capital Territory of Delhi, The Delhi Epidemic Diseases, (Management of COVID-19) Regulations, 2020, *available at*: https://covidlawlab.org/wp-content/uploads/2020/12/India_2020.06.13_Legislation_The-Delhi-Epidemic-Diseases-Management-of-COVID-19-Regulations-2020_EN.pdf (last visited on Jan. 26, 2022).
35. Department of Health and Family Welfare, Government of National Capital Territory of Delhi, notification dated Oct. 14, 2021.
36. *Devi Dass Gopal Krishnan* v. *State of Punjab*, AIR 1967 SC 1895, at 15; *Gwalior Rayon Silk Mfg. (Wvg.) Co.* v. *Assistant Commissioner of Sales,* (1974) 4 SCC 98; *Ramesh Birch* v. *Union of India,* (1989) 1 SCC Supp 430, at 13, 15, 18, and 19; in Re Delhi Laws Act, 1912, Ajmer-Merwara (Extension of Laws) Act, 1947 and Part "C" States (Laws) Act, 1950, AIR 1951 SC 332; *Municipal Corporation of Delhi* v. *Birla Cotton, Spinning, and Weaving Mills*, AIR 1968 SC 1232; *M.K. Papiah and Sons* v. *Excise Commissioner,* (1975) 1 SCC 492; *Avinder Singh* v. *State of Punjab,* (1979) 1 SCC 137; *Registrar of Cooperative Societies* v. *K. Kunjabmu,* (1980) 1 SCC 340; *Roger Mathew* v. *South Indian Bank Ltd*., (2020) 6 SCC 1.

    Recently, in *Keshavlal Khemchand and Sons Private Limited* v. *Union of India,* (2015) 4 SCC 770, a two-judge bench of the supreme court noted that "the proposition that essential legislative functions cannot be delegated does not appear to be such a clearly settled proposition and requires a further examination… We leave it open for debate in a more appropriate case on a future date" (at 51.1). The court pointed out that earlier decisions had not been able to lay down as to what exactly

These principles find support from comparative developments in common law jurisdictions as well. For instance, the House of Lords Select Committee on the Constitution, in its sixteenth report (2018), has also recently concluded that primary legislation should be 'sufficiently clear' to be able to guide executive discretion. It stated that if there are policy lacunae within the legislation, it is unacceptable for subordinate legislations to fill them especially since they escape parliamentary scrutiny in most part.[37]

Before we move on to examine the contents of the Delhi (COVID-19) Regulations and the Delhi (Management of COVID-19) Regulations against the above-mentioned principles, the statutory provision under which they have been promulgated needs to be briefly discussed. Section 2 of the 1897 Act provides that in order to prevent the outbreak of an epidemic, the state government may take such measures "as it shall deem necessary" to prevent such an outbreak. Hence, the above two regulations were promulgated under the authority of section 2 of the 1897 Act.

Now, the Delhi (COVID-19) Regulations invoke section 2 of the 1897 Act to provide for pre-censorship of the media vide regulation 6, which prescribes that:

> "No person/institution/organisation will use any print or electronic media for information regarding COVID-19 without prior permission of the Department of Health and Family Welfare, Govt of NCT of Delhi. This is to avoid spread of any rumour or unauthenticated information regarding COVID-19. In case any person/institution/organisation is found indulging in such activity, it will be treated as a punishable offence under these regulations."[38]

Further, regulation 15 of the Delhi (COVID-19) Regulations, ipso facto incorporates all the advisories issued by the union government under a different legislation, viz., the Disaster Management Act, 2005,[39] as directions issued by the government of NCT of Delhi under the 1897 Act.[40] Furthermore, regulation 16 prescribes the containment measures that the state task force is entitled to take if cases of COVID-19 are reported from a specific geographical area. These contain a list of eight specific measures, in addition to a catch-all sub-regulation entitling the government to take "any other measure as directed by the Department of Health and Family Welfare".[41] It was in furtherance of the Delhi (COVID-19) Regulations that the Health and Family Welfare Department issued an order dated 12 March 2020 – on the same date when the Delhi (COVID-19) Regulations were promulgated – ordering the shutting down of educational institutions, cinema halls, and public swimming pools.[42]

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constitutes "essential legislative function". While it is no doubt true that there has not been a clear and exhaustive elucidation of what constitutes essential legislative policy, this analysis is concerned with the recognition of the principle that it is for the legislature to make policy and for the executive to implement it, which has not been controverted by the decision in *Keshavlal Khemchand and Sons Private Limited v. Union of India*. The present analysis also more sharply focuses on the use of general and vague terms such as in section 2 of the Epidemic Diseases Act, 1897 which provide no guidance at all and enable the executive to define for itself what the policy should be. That this is not for the executive to do is, again, not something that is disputed in the decision in *Keshavlal*. In any event, the principles supported by the catena of decisions cited above have been affirmed by the more recent decision by a Constitution Bench of the supreme court in *Roger Mathew,* (2020) 6 SCC 1.

37. House of Lords Select Committee on the Constitution, "The Legislative Process: The Delegation of Powers" (2018) p. 23, *available at*: https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/225/22506.htm#_idTextAnchor028 (last visited on Dec. 2, 2021).
38. *Supra* note 33, reg. 6.
39. The Disaster Management Act, 2005 (Act 53 of 2005).
40. *Supra* note 33, reg. 15.
41. *Id.* s. 16 (ix).
42. Health and Family Welfare Department, Government of National Capital Territory of Delhi, order dated Mar. 12, 2020 under the Delhi Epidemic Diseases, COVID-19, Regulations, 2020 and the Epidemic Diseases Act, 1897.

The contents of the Delhi (COVID-19) Regulations as detailed above—viz., pre-censorship on the media; automatically incorporating central government advisories as regulations issued under a different central legislation; and empowering the executive to take any measures as it may consider appropriate under the circumstances—could be seen as bordering on policy choices being made by the executive.

Delegated Legislation Shall Not Be 'Manifestly Arbitrary'

Several judicial pronouncements have declared that delegated legislations would be held to be violative of Article 14 if they are "manifestly arbitrary". These have held that a delegated legislation is "manifestly arbitrary" if it cannot reasonably be expected to emanate from the authority delegated; is formulated without adequate determining principle; and is forbiddingly excessive or disproportionate.[43]

More recently, in *Shayara Bano,*[44] Justice Nariman (speaking for himself and Justice Lalit), in his concurring opinion stated:

> "…it will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation… The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/*or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary.*"[45] (emphasis supplied)

The contents of the Delhi (COVID-19) Regulations, as discussed in the previous sections of this survey, may be seen to breach the above prescriptions. The "as it shall deem fit" directive in section 2 of the 1897 Act—unaccompanied by any further indication of legislative policy—renders the legality of the Delhi (COVID-19) Regulations without any adequate determining principle. Further, its imposition of pre-censorship upon print media also puts it in danger of violating Article 19(1)(a) of the Constitution, as held by a catena of supreme court decisions.[46]

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43. *Khoday Distilleries Ltd.* v. *State of Karnataka,* (1996) 10 SCC 304; *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India,* (1985) 1 SCC 641; *Sharma Transport* v. *State of Andhra Pradesh,* (2002) 2 SCC 188; *Cellular Operators Association of India* v. *Telecom Regulatory Authority of India,* (2016) 7 SCC 703; *Franklin Templeton Trustee Services Private Limited* v. *Amruta Garg,* AIR 2021 SC 3494; *Shayara Bano* v. *Union of India,* (2017) 9 SCC 1; *Pravinsinh Indrasinh Mahida* v. *State of Gujarat*, High Court of Gujarat, R/Special Leave Application No. 5301 of 2020, decided on Aug. 27, 2021.

    These decisions reaffirm the proposition that delegation legislation shall not be manifestly arbitrary. It is also worth mentioning that the full bench decision of the Madhya Pradesh high court in *State v. Haiderali*, AIR 1957 MP 179 (FB), 1957 CriLJ 1266 had laid down the proposition that delegated legislation cannot infringe fundamental rights by the exercise of uncontrolled and arbitrary executive action, but does not seem to have been directly followed by the supreme court, apart from a citation by the Delhi high court in *Durga Chand Kaushik v. Union of India*, AIR 1979 Del 249.

44. *Shayara Bano* v. *Union of India,* (2017) 9 SCC 1.

45. *Id*. at 101.

46. *Brij Bhushan and Another* v. *State of Delhi*, AIR 1950 SC 129; *Express Newspapers (Private) Ltd. And Ors.* v. *Union of India and Ors*., AIR 1958 SC 578; *Secretary*, *Ministry of Information and Broadcasting, Govt. of India and Ors.* v. *Cricket Association of Bengal and Ors*., AIR 1995 SC 1236; *R.K. Anand* v. *Registrar, Delhi High Court,* (2009) 8 SCC 106; and *Subramanian Swamy* v. *Union of India*, AIR 2016 SC 2728. In *K.A. Abbas* v. *Union of India and Anr.*, AIR 1971 SC 481, a constitution bench of five judges of the supreme court treated motion pictures/films on a different footing from print media, terming pre-censorship not unjustifiable per se for the former.

Delegated Legislation Cannot Prescribe New Penalties Not Contemplated by Primary Legislation

When it comes to prescribing penalties and fines by way of delegated legislation, it has been held that if the parent statute itself prescribes the penalties in question, or an upper limit of a fine to be imposed, then it constitutes 'permissible delegation' for the executive to make rules incorporating those penalties, or impose fines within the upper limit prescribed by the legislation, as the case may be. Imposition of penalties and fines, ultimately, needs to be on the back of statutory authority.[47] The underlying principle has been held to be as follows:

> "Prescribing an offence and its punishment is essentially a legislative act. But provided that this can be attributed to the legislative body, the actual working out of it can be delegated to a non-legislative body. The most simple example will be where the legislature itself prescribes the rules, makes its violation an offence, and lays down the penalty… *The legislative body, instead of prescribing the precise penalty may also lay down the limit or standard, leaving it to the non-legislative body to prescribe the penalty within such limits or in accordance with the standard laid down.* In such a case where the non-legislative body avails itself of the power, it cannot be said that it has created the offence or prescribed the penalty. *It is the legislative body which has created the offence and prescribed the penalty, but has delegated the power to the non-legislative body to apply or not to apply such provisions, or apply them in a suitable manner within the limits imposed, as is required under the prevailing circumstances.* To this extent the delegation of power is a permissible delegation… Then again the limits of the penalty have been fixed by the legislature and the standard to be followed has also been laid down."[48] (emphasis supplied)

Now, coming to the government's COVID-19 response, regulation 3(h) of the Delhi (Management of COVID-19) Regulations empowers 'authorised persons' to impose a fine of Rs. 500 for the first offence, and of Rs. 1,000 for the second offence of disobeying directives on social distancing and hygiene.[49] Further, regulation 5 provides that if any person fails to pay the penalty "on the spot", action would be taken against them under section 188 of the Indian Penal Code (IPC), 1860, which prescribes penalties for disobedience of orders duly promulgated by public servants.[50] Furthermore, the Delhi (COVID-19) Regulations and the Delhi (Management of COVID-19) Regulations both provided for legal immunity for actions undertaken further to such regulations under "good faith", and a general provision enabling proceedings under section 188, IPC against anyone in breach of the regulations. These are direct incorporations of sections 3 and 4 of the 1897 Act, respectively.[51]

To be sure, the 1897 Act does provide for prosecution under section 188 of the IPC[52] and legal immunity for actions undertaken in good faith,[53] and to that extent the Delhi (Management of COVID-19) Regulations were entitled to incorporate these two prescriptions. Section 188, IPC further provides the

47. *D.N. Ghosh* v. *Additional Sessions Judge*, AIR 1959 Cal 208, at 12. Also see *Delux Land Organisers* v. *State of Gujarat*, AIR 1992 Guj 75; In re Delhi Laws Act, 1912, Ajmer-Merwara (Extension of Laws) Act, 1947 And Part 'C' States (Laws) Act, 1950, AIR 1951 SC 332; *Kunj Behari Lal Butail* v. *State Of Himachal Pradesh*, (2000) 3 SCC 40; *Khemka and Company* v. *State of Maharashtra,* (1975) 2 SCC 22; *Collector of Central Excise, Ahmedabad* v. *Orient Fabrics Private Ltd*., (2004) 1 SCC 597.
48. *Ibid.*
49. *Supra* note 34, reg. 3(h).
50. *Id.,* reg. 5.
51. *Supra* note 33, regs. 18, 19; *supra* note 34, regs. 5, 6.
52. *Supra* note 32, s. 3.
53. *Id*., s. 4.

penalty of a maximum fine of Rs. 1,000, and therefore, again, the Delhi (Management of COVID-19) Regulations could lawfully impose the first fine of Rs. 500 and the second fine of Rs. 1,000.

Accordingly, while the Delhi (COVID-19) Regulations and the Delhi (Management of COVID-19) Regulations come close to placing essential policy choices in the hands of the executive without adequate determining principle, they nevertheless meet the third prescription of no new penalty without legislative backing, as they stay within the limits imposed by sections 3 and 4 of the 1897 Act.

It may be argued that the above deviations could have been prevented by the enactment of a *sui generis* primary legislation incorporating clear guidelines for the executive; or an ordinance could have first been enacted to be later replaced by legislation.[54] However, this would be overlooking the complications and uncertainties which currently exist over the demarcation of law-making powers between the cabinet and the LG – as already discussed in the previous sections of this survey. With the LG having withheld consent on even routine administrative matters on past occasions, it is doubtful that a sui generis primary enactment on COVID-19 would have received the LG's assent without controversy.[55] This may perhaps justify the Delhi government's choice of the 1897 Act—a primary legislation already available to it—for promulgating subordinate legislations to manage its COVID-19 response.

Moreover, the route of adopting subordinate legislations should also be appreciated in light of the emergency nature of the pandemic. It has been shown in the quantitative analysis of this survey that 2020 saw the legislative assembly sitting for one of its fewest number of sessions, and hence the impact of COVID-19 on the government's legislative output cannot be overstated.

Rule-making under Article 309 of the Constitution of India

Article 309 of the Constitution subjects the 'recruitment and conditions of service of persons serving the union or the state' to other provisions of the Constitution.[56] The proviso further enables the president (in case of services and posts in connection with the affairs of the union) and governors (in case of services and posts in connection with the affairs of the states) to make rules regarding such recruitment and conditions of service, "until provision in that behalf is made by or under an Act of

54. Indeed, states such as Karnataka, Kerala, Rajasthan, and Uttar Pradesh did follow the latter route by promulgating ordinances to either amend or replace entirely the 1897 Act. These ordinances then took the form of individual state legislations on epidemic diseases. See Anoop Ramakrishnan and N. R. Nikhil, "Annual Review of State Laws, 2020", *PRS Legislative Research*, June 2021, at 8, *available at*: https://prsindia.org/files/policy/policy_analytical_reports/Annual_Review_of_State_Laws_2020.pdf (last visited on Dec. 4, 2021). Also *see* the Karnataka Epidemic Diseases Act, 2020 (Act 26 of 2020); TNN, "Epidemic bill gets passed in Kerala assembly unanimously", *The Times of India,* June 4, 2021, *available at*: https://timesofindia.indiatimes.com/city/kochi/epidemic-bill-gets-passed-in-assembly-unanimously/articleshow/83213580.cms (last visited on Dec. 5, 2021); the Rajasthan Epidemic Diseases Act, 2020 (Act 21 of 2020); and the Uttar Pradesh Public Health and Epidemic Diseases Control Act, 2020 (Act 17 of 2020). All of these were preceded by ordinances, and later approved as enactments by the respective state legislative assemblies.

55. In fact, only recently the LG refused the Delhi government's proposal to lift the weekend curfews and ease COVID-19 restrictions imposed in the wake of the Omicron wave in the state. *See* Express News Service, "Delhi LG rejects AAP govt's proposal, refuses to lift weekend curfew, ease Covid-19 restrictions", *The Indian Express*, Jan. 22, 2022, *available at*: https://indianexpress.com/article/cities/delhi/delhi-weekend-curfew-covid-restrictions-odd-even-system-7734710/ (last visited on Jan. 21, 2022).

    Even an ordinance would have had to be first promulgated by the LG and then be replaced by a primary legislation passed by the Assembly—in effect necessitating cooperation between the Assembly and the LG over the contents of such an ordinance and the legislation that would follow.

56. The Constitution of India, art. 309.

the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."[57] This implies that the power of the president and governors to make rules on recruitment and service conditions is operable only in the vacuum where the appropriate legislature (parliament—for persons serving the union and state legislative assemblies—for persons serving the state) has not enacted a law governing such recruitment/service conditions. Accordingly, the effect of the proviso is that state legislatures are entitled to regulate the recruitment/service conditions of state government employees, and the rules made by the governor in that behalf would need to give way to the relevant state legislation.

The proviso to Article 309, thus, enables the state government to exercise legislative control over the above-mentioned field, and specifically grants state legislatures primacy and an overriding power over the rules made by governors.

In fact, amendments were tabled during the discussion on the draft Article 282 in the constituent assembly (which later took the form of Article 309) with the specific objectives of diluting the state legislature's powers in the matter, and giving them to either the state public service commissions (moved by Brajeshwar Prasad) or be retained with the parliament (moved by Shibban Lal Saxena).[58] However, all such amendments were vetoed during the vote on the Article in the Assembly after Dr. Ambedkar indicated his disapproval of the amendments.[59] This reaffirms the view that the legislative intent was to provide state legislatures with primacy vis-à-vis the union with respect to legislating on the recruitment/service conditions of state employees.

Notwithstanding the same, the government, in 2020, ceded ground to the union on at least four instances where rules were promulgated by the LG. These include:

1. Delhi Higher Judicial Service (Amendment) Rules, 2020;
2. Department of Training and Technical Education, Government of National Capital Territory of Delhi, Assistant Professor, Pharmacy Recruitment Rules, 2020;
3. Lecturer, Fashion Designing Recruitment Rules, 2020; and
4. 'Multi -Tasking Staff' Recruitment Rules, 2020.

Accordingly, for at least the above subject-matters, the legislative assembly could have validly exercised its mandate under the proviso to Article 309, but it appears to have let the union drive the regulation instead. This is particularly puzzling for a state such as Delhi which has had a chequered and mostly bitter history of disputes between the cabinet and the LG over control over several legislative categories. One explanation could be that in comparison to the matters over which the government has had differences with the LG in the past – transfer and posting of civil servants in the state, initiating inquiry over government officers, enactment of an anti-corruption legislation, etc. – the above-mentioned four subject-matter categories may have been perceived as relatively low-stakes. However, there is no such official explanation from the government, leaving us with the limited conclusion that at least in these four aspects, the government was comfortable for the union to exercise its own rule-making powers, pending any future enactments by the Assembly.

57. *Ibid.*
58. Constituent Assembly Debates on Sept. 7, 1949, *available at*: https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-09-07 (last visited on Dec. 1, 2021).
59. *Ibid.*

Conclusion

The year 2020 saw the NCT of Delhi government's primary legislative business being displaced by delegated law-making. Some of these delegated legislations seem to raise issues of constitutional principle when seen against specific prescriptions on delegated legislations.

However, in the context of the uncertain power-sharing arrangement between the government and the LG, and also the emergency nature of the pandemic, the state perhaps did not have much choice other than promulgating subordinate legislations under the set of primary legislations already available to it, for which purpose it chose the 1897 Act.

The state has been uniquely placed within the constitutional scheme as the assembly is restricted by Article 239AA from enacting laws in the spheres of 'police', 'land', and 'public order' – items otherwise available in the state list. This led to bitter disputes in the past between the government and the union—represented by the LG—on control over several matters such as transfers and postings, services, installation of CCTVs, and other welfare schemes of the government. Against that backdrop, it is puzzling to note that while Article 309 of the Constitution empowers the Assembly to enact laws with respect to recruitments and service conditions of the state government employees, and also accords to them express primacy over any rules made by the LG, the government has not yet enacted any primary legislation for the said fields, which continue to be governed by union rules.

UTTAR PRADESH

Faizan Mustafa[1]

Introduction

Uttar Pradesh has the largest legislature in India. It is one of the six states with a bicameral legislature (others include Andhra Pradesh,[2] Bihar, Karnataka, Maharashtra, and Telangana), comprising of a lower house called the Uttar Pradesh legislative assembly and an upper house described as the Uttar Pradesh legislative council. Presently, the legislative assembly has 403 members along with one nominated Anglo-Indian member, while the legislative council has 100 members. Prior to 1967, the strength of the legislative assembly was 431 members, including one nominated Anglo-Indian member, which was revised to 426, including one nominated Anglo-Indian member. After the reorganisation of the state and the formation of Uttarakhand on November 9, 2000, the strength of the legislative assembly was reduced to 404, including one nominated Anglo-Indian member.

Performance of Uttar Pradesh Assembly: An Overview

Due to the onset of the COVID-19 pandemic and subsequent lockdowns, the Assembly's functioning days and hours were at their lowest in 2020. It operated for only 13 days, with a total of 61.5 working hours divided into two sessions.[3] The first session was held from March 13, 2020 to March 14, 2020, while the second session was held from August 20, 2020 to August 24, 2020. The average working days for the previous three years of the seventeenth legislative assembly were 23.67 days. The working hours for 2017, 2018 and 2019 range between 90 and 100 hours per year. (See Figure 1.)

During this period, a total of 37 bills were introduced, out of which 31 were enacted as legislations. Moreover, during the term of seventeenth legislative assembly, 45 percent of the bills (excluding 14 appropriation bills) were passed on the same day that they were introduced, while 29 percent were passed on the next day. (See Figure 2.) Until December 2021, 146 bills were introduced and passed in the Uttar Pradesh Assembly (excluding appropriation bills). All the bills introduced were passed in the same session. None of the bills during this term was referred to a select committee.[4] This is a new trend. Even in parliament, in the last seven years, only a small number of bills have been sent to

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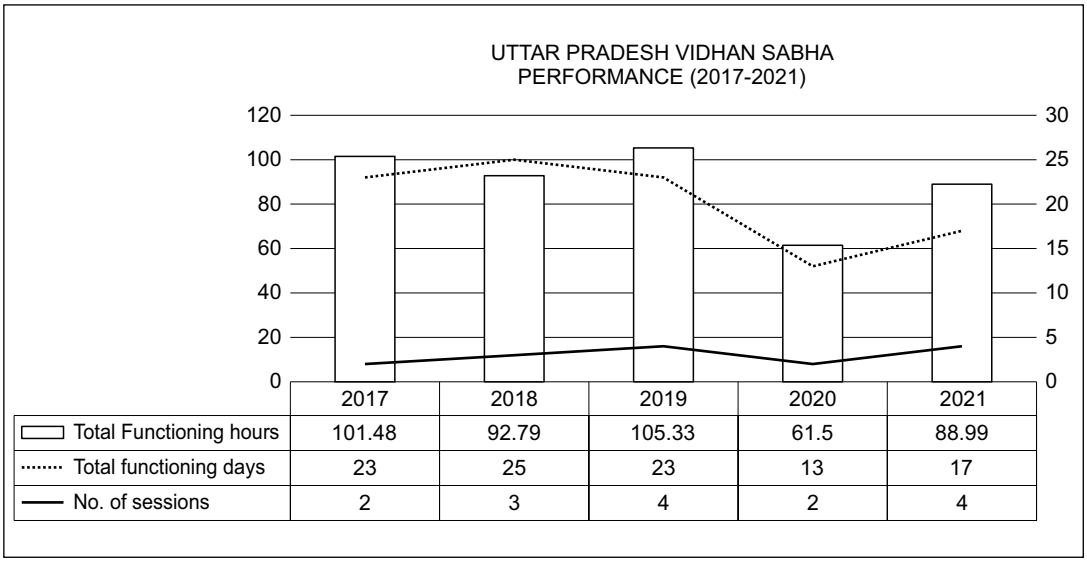
2. For the trials and tribulations on the abolition and retention of the Andhra Pradesh Legislative Council, see the Andhra Pradesh survey *supra*.
3. PRS Legislative Research, "Functioning of 17th Uttar Pradesh Assembly (2017-2022)", *available at:* https://prsindia.org/legislatures/states/functioning-17th-uttar-pradesh-assembly-2017-2022 (last visited on Jan. 21, 2022).
4. PRS Legislative Research, "Vital Stats, Functioning of 17th Uttar Pradesh Assembly", *available at*: https://prsindia.org/policy/vital-stats/functioning-of-the-17th-uttar-pradesh-assembly (last visited on Jan. 21, 2022).



	2017	2018	2019	2020	2021
Total Functioning hours	101.48	92.79	105.33	61.5	88.99
Total functioning days	23	25	23	13	17
No. of sessions	2	3	4	2	4

Figure 1: Functioning of the Uttar Pradesh Legislative Assembly

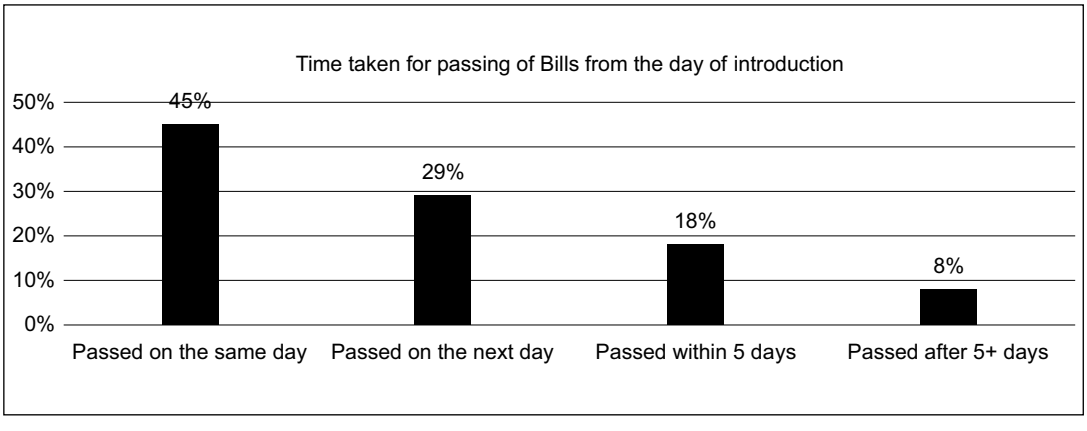


Figure 2: Time taken to pass bills after introduction

a select committee. In the second session of 2020, the number of bills introduced and passed was 27, which is the highest for any session over the previous years. The Assembly met for only three days in that session.

The year 2020 also saw the highest number of ordinances being promulgated, many of which were criticised on several grounds.[5] Totally, 57 ordinances were promulgated during the seventeenth

5. The Recovery Act was criticised by the supreme court in its order dated Feb. 18, 2022 for being violative of principles of natural justice and for being enacted contrary to the guidelines laid down by the apex court in 2011 and 2018. Mehal Jain, "Following Supreme Court's Criticism, UP Govt Withdraws Recovery Notices Issued To Anti-CAA Protesters Before 2020 Act", *LiveLaw*, Feb. 18, 2022, *available at*: https://www.livelaw.in/top-stories/supreme-courts-criticism-up-govt-withdraws-recovery-notices-issued-anti-caa-protesters-directs-refund-recoveries-192249

legislative assembly, 23 of which were introduced and passed as statutes in 2020. Significant among these were the Uttar Pradesh Recovery of Damages to Public and Private Property Act, 2020, the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2020 and the Uttar Pradesh Prevention of Cow Slaughter (Amendment) Act, 2020.

Sectoral Classification of Statutes/Ordinances

The statutes enacted and ordinances promulgated in 2020 may be categorised under the following sectors: agriculture, education, finance/taxation, health, land, law and order, and religion.

Agriculture

In 2020, Uttar Pradesh enacted three laws on agriculture. These included: (i) the Uttar Pradesh Krishi Utpadan Mandi (Sanshodhan) Adhiniyam, 2020; (ii) the Uttar Pradesh Krishi Utpadan Mandi (Dwitiya Sanshodhan) Adhiniyam, 2020; and (iii) the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) (Amendment) Act, 2020.

The Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 provides for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of markets in Uttar Pradesh. The Amendment Act empowers the state government to exempt specified agricultural produce or products from the mandi fee (excluding development cess). To qualify for this exemption, the produce must be a raw material that will be used by newly established agricultural processing units. The government must be when it is satisfied that it is necessary and expedient in the public interest to encourage the setting up of the industrial or agro-processing units in the state and to promote the marketing of the specified agricultural products. To qualify for such exemption, the cost of the plant and machinery of the unit should not be less than five crore rupees. Once the condition is fulfilled the unit can sell in the mandis without paying a fee.[6] The Uttar Pradesh Krishi Utpadan Mandi (Dwitiya Sanshodhan) Adhiniyam, 2020 amends the 1964 Act to facilitate development of mandi sub-sites. Most of the amendments are in accordance with the central government guidelines in the context of COVID-19. They deal with the decentralisation of mandi sites to stop farmers and traders from crowding at the main mandis and to comply with the social distancing norms.

The Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) (Amendment) Act, 2020 adds the provision for a no-confidence motion against the chairman of the Cane Development Council. The chairman against whom a no-confidence motion has been passed will be removed from office and replaced by a successor. The successor will be chosen from among the council's non-government members in accordance with the procedures provided under the Act.

6. Since the central farm law on which this amendment was based has now been repealed, what the new Assembly would do remains to be seen.

Education

With seven bills, Uttar Pradesh was among the states[7] that enacted a high number of laws relating to education in 2020. The Assembly introduced three bills dealing with the establishment of three universities: (i) State University of Police and Forensic Science at Lucknow,[8] (ii) State Ayush University in the district of Gorakhpur,[9] and (iii) National Law University at Prayagraj.[10] While the state does need a forensic science university to improve investigation of crimes and an Ayush university to promote indigenous methods of treatment, the need for another National Law University seems debatable since the Ram Manohar Lohiya National Law University is already there in Lucknow. But then Madhya Pradesh has two law universities and Maharashtra has as many as three National Law Universities.

The other two laws passed dealt with changing the names of two universities. The Uttar Pradesh Jagadguru Rambhadracharya Handicapped University (Amendment) Act, 2020 changed the name of "Jagadguru Rambhadracharya Handicapped University" to "Jagadguru Rambhadracharya Divyanga University". This was in light of the decision of the government of India to refer to "handicapped persons" as "divyang" and thereby give them due respect.[11] The Act also amended section 4 of the principal Act, which had surprisingly provided that the university would not be entitled to any grant-in-aid or any financial assistance from the state government or any other body or corporation owned or controlled by the state government. Subsequently, the provision was amended to allow the university to receive grants or financial assistance from the central and state governments and non-government organisations. In reality, there is need for large public investment in higher education to make it accessible to the economically disadvantaged sections of the population.

Similarly, the Uttar Pradesh State Universities (Amendment) Act, 2020 changed the name of the "Khwaja Moinuddin Chishti Urdu, Arabi, Pharsi University, Lucknow" to "Khwaja Moinuddin Chishti Language University, Lucknow". The University was established in 2009[12] for teaching and research in Urdu, Arabi and Pharsi Languages. Later on, the Uttar Pradesh State Universities (Amendment) Act, 2010 changed the name of the University to "Uttar Pradesh Urdu, Arabi-Farsi University". It was renamed "Manyavar Shri Kanshi Ram Ji Urdu, Arabi-Farsi University" in 2011[13] to honour the politician and social reformer Kanshi Ram. A year later, it was again renamed as "Khwaja Moinuddin Chishti Urdu, Arabi-Farsi University"[14] in honour of the Sufi saint Mu'in al-Din Chishti of Ajmer. The frequency with which the names of cities and universities have been changed shows that universities and their names have not been exempt from political battles.

The other two laws passed in the field of education in 2020 included the Uttar Pradesh State Universities (Second Amendment) Act, 2020 and the Uttar Pradesh Self-Financed Independent Schools (Fee

7. The other states are Karnataka (seven) and Andhra Pradesh (six).
8. The Uttar Pradesh Police and Forensic Science University Act, 2020 (Act 4 of 2020).
9. The State Ayush University, Uttar Pradesh Act, 2020 (Act 6 of 2020).
10. The Uttar Pradesh National Law University, Prayagraj, Act, 2020 (Act 26 of 2020).
11. Ambika Pant, "Use of 'Divyang' will not end discrimination, access to rightful entitlements will: Disability Rights Groups", *The Times of India*, May 26, 2016, *available at*: https://timesofindia.indiatimes.com/india/use-of-divyang-will-not-end-discrimination-access-to-rightful-entitlements-will-disability-rights-groups/articleshow/52456373.cms (last visited on March 20, 2022). (It is a different matter that persons with disabilities have consistently opposed the nomenclature.)
12. The Uttar Pradesh Arabi, Pharsi University Act, 2009 (Act 12 of 2009).
13. The Uttar Pradesh State Universities (Amendment) Act, 2011 (Act 6 of 2011).
14. The Uttar Pradesh State Universities (Amendment) Act, 2012 (Act 5 of 2013).

Regulation) (Amendment) Ordinance, 2020. The former dealt with changing the territorial jurisdictions of Lucknow University and Chhatrapati Shahu Ji Maharaj University, Kanpur to reduce the difficulties faced by students and improve the management of the institutions. The latter amendment modified the Uttar Pradesh Self-Financed Independent Schools (Fee Regulation) Act, 2018 to add instructions with respect to the regulation of fees by the self-financed independent schools during emergencies and other special circumstances.

Finance/Taxation

The Uttar Pradesh Goods and Services Tax Act (GST), 2017 was amended three times during 2020. These amendments were largely aimed at the smoothening the procedures related to the filing of tax returns under the new GST laws. Thus, for example, the First Amendment Act, amended the provisions in order to implement a new return filing system which focuses on the annual filling of returns and quarterly payment of tax by taxpayers who opt for composition levy; and quarterly filing of return and monthly payment of tax for certain other categories of taxpayers.[15] Similarly, the Third Amendment Act aimed to remove a number of other hardships in the tax regime such as procedures for opting out of registration or extending time to revoke cancellation of registration.[16]

The other major focus of the finance laws was to address the impact of the pandemic and lockdowns on the freedom of movement. These restrictions had caused delays in the filing of taxes. To grant relief to the taxpayers, the Uttar Pradesh Goods and Services Tax (Second Amendment) Act, 2020 and the Uttar Pradesh Value Added Tax (Amendment) Act, 2020 were passed, which allowed the government to extend the statutory time limit for actions which could not be completed or complied with due to force majeure. Another significant law passed was the Uttar Pradesh Contingency Fund (Amendment) Act, 2020, which increased the corpus of the Uttar Pradesh Contingency Fund from Rs. 600 crores to Rs. 1200 crores. This was done to meet the increase in the state's budget size over the years and to arrange for extra funds to fight the pandemic.

Fiscal Responsibility and Budget Management

Every state has its own law governing fiscal responsibility and budget management. These rules limit the state government's outstanding liabilities, revenue deficits, and fiscal deficits.[17] They set a limit of three percent of gross state domestic product (GSDP) for the budget deficit. If states achieve the specific criteria, this deficit can be increased to 3.5 percent of GSDP. However, due to a paucity of resources with the states, which had to deal with the COVID-19 situation, the central government permitted states to borrow up to five percent of GSDP under specified conditions in the financial year 2020-2021.[18] To avail of this enhanced limit, state governments had to amend their Fiscal Responsibility and Budget Management Acts.[19]

15. The Uttar Pradesh Goods and Services Tax Amendment) Act, 2020 (Act 5 of 2020).
16. The Uttar Pradesh Goods and Services Tax (Third Amendment) Act, 2020 (Act 24 of 2020).
17. The fiscal deficit is the difference between the government's receipts and expenditure, which it must cover by borrowing.
18. ET Bureau, "Centre raises borrowing limit of states from 3 pc of GSDP to 5 pc in FY21", *The Economic Times*, May 17, 2020, *available at*: https://economictimes.indiatimes.com/news/economy/policy/centre-raises-borrowing-limit-of-states-from-3-pc-of-gsdp-to-5-pc-in-fy21/articleshow/75785946.cms?from=mdr (last visited on Jan. 21, 2022).
19. The Uttar Pradesh Fiscal Responsibility and Budget Management (Second Amendment) Act, 2020 (Act 22 of 2020).

This amendment was also brought in to help the state cope with its decreased share in central taxes for the financial year 2019-2020. This reduction occurred because the government of India adjusted Rs. 58,843 crores against the states' share of central taxes to set off the lower tax revenue collected by the state in the previous financial year.

Consequently, the Uttar Pradesh Fiscal Responsibility and Budget Management (Amendment) Act, 2020 was passed, which amended the Uttar Pradesh Fiscal Responsibility and Budget Management Act, 2004, to sanction an additional borrowing of Rs. 10,570 crores for the fiscal year 2019-2020.

Health

To address to the COVID-19 pandemic, the state introduced the Uttar Pradesh Public Health and Epidemic Diseases Control Ordinance on May 11, 2020. The ordinance empowered the state government to notify any disease as an epidemic disease if it was satisfied that the normal provisions of law and medical practice were insufficient to control the spread of the disease. The state government could make regulations on quarantine, patient-tracing and take steps to prevent spread of rumours or other misinformation on the pandemic. The proclamation was to stay in force for three months but could be extended by the government.

The ordinance also provided for the constitution of top-heavy Epidemic Control Authorities at the state and district levels. The state authority consisted of the chief minister (as chairman), the medical and health minister, and the chief secretary among others. It would be responsible for advising the government and introducing uniform measures for preventing/controlling the spread of the epidemic and coordinating with the central government and other state authorities. Similarly, the district authority comprised the district magistrate (as chairman), the district superintendent of police, and the chief medical officer. The district authority had to ensure an adequate supply of essential commodities, and maintain public order. Significantly, it could also require any person or organisation dealing in tentage or temporary structures to raise such structures if needed or requisition any property, motor vehicles, or private medical and health facilities to control the spread of the epidemic.

The ordinance inter alia introduced an array of punishments to be imposed on people who wrongfully concealed themselves or violated quarantine orders or committed violence against public health officials. The state government also assumed the power to recover from individuals or organisations any losses it incurred by their deliberate or negligent conduct. These provisions were added in response to attacks on health workers who went to collect samples from suspected COVID-19 patients in a few districts in the state.[20]

The Public Health and Epidemic Diseases Control Ordinance was issued despite the central government promulgating an ordinance to amend the Epidemic Diseases Act, 1887. In fact, subsequent to the central ordinance, there was no need for the states to come up with their own ordinances on this subject. More significantly, the punishments provided under the state's ordinance were inconsistent with the scheme of sentences provided in the substantive and general criminal law of the country, that

20. HT Correspondent, "CM Adityanath threatens action under NSA after doctors, cops attacked in UP", *Hindustan Times*, April 15, 2020, *available at*: https://www.hindustantimes.com/india-news/stones-pelted-on-docs-ferrying-suspected-covid-19-patient-in-up-s-moradabad/story-LsoULfBWBwkVDpp09yqVnK.html (last visited on Jan. 21, 2022).

is the Indian Penal Code, 1860. It seems like the political necessity of making a law trumped the legal limitations on the law-making power of the state.

Land

The Uttar Pradesh legislative assembly passed the Uttar Pradesh Revenue Code (Amendment) Act, 2020[21] amending the Uttar Pradesh Revenue Code Act, 2006 to include the "people of the third gender" as members of a landowner's family giving them succession and physical rights over the property. (The third gender being defined as a person who is of a gender different from the male or the female gender.) The Uttar Pradesh Revenue Code, 2006 was enacted to consolidate and amend the law relating to land tenures and land revenue of the state. This law replaced the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1952, which did not allow daughters a share in agricultural land if there were sons in the family.

Law and Order

Citing the supreme court's guidelines given in *Re: Destruction of Public & Private Properties v. State of A.P.*,[22] the Uttar Pradesh government introduced an ordinance which, according to its long title, aimed to "provide for recovery of damage to public or private property during hartals, bandhs, riots, public commotion, protests in respect of property". Following the nationwide protests against the Citizenship Amendment Act in March 2020, the district authorities of Lucknow erected banners displaying the names, photographs, and addresses of individuals accused of causing damage to property during the protests in the city.[23] They sought compensation from the accused persons and threatened confiscation of the rioters' properties if they failed to pay compensation. This provision was challenged in the Allahabad high court, which held that the publication of personal details of people violated Article 21 (right to life) of the Constitution. The court also noted that the publication of personal details of the accused persons merely to deter them from participating in illegal activities constituted an unwarranted intrusion into the privacy of persons.[24] But this did not stop the government from going ahead with promulgating the Uttar Pradesh Recovery of Damage to Public and Private Property Ordinance, 2020 to create a mechanism to recover damages for destruction of public or private property during any protest or riot.

The Act that replaced the ordinance empowered the state government to constitute a Claims Tribunal to decide on compensation claims for the damage caused to public or private property during strikes, protests, or riots.[25] The members of the tribunal were to be appointed by the state government.[26] The following qualified for appointment to the tribunal: (i) a retired district judge (as chairman); and (ii) an officer of the rank of additional commissioner (as a member).[27] The functions and powers of the tribunal included the following: (i) determining the damages caused to properties and awarding compensation;

21. Act 28 of 2020.
22. *Re*: *Destruction of Public & Private Properties* v. *State of A.P.*, (2009) 5 SCC 212.
23. Omar Rashid, "Now, police banners in Lucknow show anti-CAA protesters accused of violence", *The Hindu*, March 6, 2020, 2020, *available at*: https://www.thehindu.com/news/national/other-states/up-police-put-up-hoardings-identifying-anti-caa-protesters-accused-of-violence/article30998121.ece (last visited on March 22, 2022).
24. *In Re Banners placed on the roadside in the City of Lucknow* v. *State of UP,* (2020) 5 All LJ 609.
25. The Uttar Pradesh Recovery of Damage to Public and Private Property Act, 2020 (Act 11 of 2020).
26. *Id* at s. 7(1).
27. *Id* at s. 7(3).

(ii) appointing a claims commissioner, if required, to estimate the damages and to investigate the case; (iii) appointing an assessor in every district to assist the claims commissioner in assessing the damage to property; and (iv) summoning video or other recordings to assist the claims commissioner and assessor in pinpointing the damage and establishing a connection with the perpetrators of the damage. The remuneration of the claims commissioner and the assessor in every case was to be determined by the state government. The claims commissioners were required to submit their report within three months or such extended time as may be granted by the Claims Tribunal.[28]

Once the parties were heard, the tribunal was required to give its orders within one year (though preferably within three months) directing the amount of compensation to be paid. The claim was to be assessed based on the damage to property. However, the compensation could not be less than the market value of the property damaged on the day of the incident. The tribunal also had the power to award 'exemplary damages' up to double the amount of compensation liable to be paid, but the reasons had to be recorded in writing. Every order or award passed by the tribunal would be final and not appealable before any court.

The constitutionality of the ordinance was challenged on several grounds before the Allahabad high court. The major point of contention was the authorisation to publish the names, addresses and photographs of defendants. The court found the authorisation violative of the right to privacy which the supreme court, in 2017, conclusively found to be a fundamental right encompassed within article 21.[29] Similarly, the Allahabad high court found provisions of the ordinance that allowed hearing of the case in the absence of the opposite party or conferred finality to the orders passed by the tribunal to be arbitrary.[30]

The state also enacted another legislation to create the Uttar Pradesh Special Security Force (UPSSF) for the protection and security of notified individuals or establishments.[31] The UPSSF was modelled after the Central Industrial Security Force (CISF) and tasked with protecting people, court premises, administrative offices, shrines, metro rail, airports, banks, and industrial undertakings notified by the state government. On request and payment of prescribed fees, the UPSSF could also be directed to provide protection to private establishments. Furthermore, a member of the UPSSF was also permitted to arrest and search a person and her/his belongings without a magistrate's order or warrant.

Law and Religion

The Uttar Pradesh Prevention of Cow Slaughter Act, 1955, prohibited cow slaughter and deemed the transportation of cows outside the state for slaughter to be illegal. Consumption of beef, defined as the flesh of cow (including bull or bullock), was prohibited but flesh in sealed containers imported into U.P was exempt. The aforementioned Act was amended in 1958, 1961, 1979 and 2002 whereas the rules were

28. *Id* at s. 8.
29. *Justice K. S. Puttaswamy* v. *Union of India*, AIR 2017 SC 4161.
30. Omar Rashid, "Allahabad High Court terms U.P.'s recovery of damages ordinance arbitrary", *The Hindu,* March 19, 2020, *available at*:https://www.thehindu.com/news/national/other-states/allahabad-high-court-terms-ups-recovery-of-damages-ordinance-arbitrary/article31103077.ece (last visited on March 22, 2022). The Supreme Court too made similar observations about this Act and consequently the government has withdrawn the notices through two GOs dated Feb. 14 and Feb. 15, 2022.
31. The Uttar Pradesh Special Security Force Act, 2020 (Act 27 of 2020).

amended in 1964 and 1979. In 2020, under the Bhartiya Janata Party government, the extant law on cow protection was further amended to enhance the protection provided to cows and to prevent their slaughter.[32] The amended law penalises the driver, operator, and the owner of any vehicle transporting beef unless proven that the transportation was done by another without the vehicle owner's knowledge.

This stringent measure was first introduced by an ordinance in 2020, which was subsequently converted into an Act. The Prevention of Cow Slaughter Act, 1955—the existing legislation—had permitted the slaughter of bull/bullock after obtaining a "fit-for-slaughter" certificate. Such a certificate could be applied for provided the cattle was over 15 years of age and had become permanently unfit for breeding or any agricultural activities. The maximum punishment for the offence of cow slaughter was seven years in the 1955 Act.

The Amending Act made punishments for illegal transport of cow and its progeny more stringent. A first offence could be punishable with imprisonment, which could range from one to ten years, and a fine of one to three lakh rupees. A second offence could result in ten years in prison and a fine of up to five lakh rupees.

The criminalisation of cow slaughter has been undertaken without recognising that many farmers and cattle ranchers find it difficult to keep cattle above their productive age.[33] Furthermore, different high courts, human rights organisations and civil society organisations found that these laws are being abused to target particular communities.[34] Unfortunately, it is not noted that, in a number of states, including Uttar Pradesh, as per the Cattle Census the population of cows is going down in comparison to buffaloes.[35] Such laws may instead of providing protection cause the extinction of cows as farmers may stop rearing them.

Another controversial ordinance promulgated in the state was the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, which allows the government to regulate religious conversions and prohibit certain types of religious conversions. This ordinance was also subsequently approved as a legislation by the Assembly. The ordinance and the pursuant statute prohibit religious conversion through: (i) force, misrepresentation, undue influence and allurement, or (ii) fraud, or (iii) marriage. Moreover, a marriage is liable to be declared void if it was entered into for the sole purpose of unlawful conversion. Under the law, anyone who wishes to marry after converting to a different religion must obtain approval from the district magistrate two months before the wedding. Punishment under the new law is a prison sentence between one to five years, and a fine of Rs. 15,000. However, if the woman involved is a minor or belongs to a scheduled caste or a scheduled tribe, the jail term ranges from three to ten years and the fine increases to Rs. 25,000. Moreover, the Conversion Act also prohibits mass conversions, the punishment for which is imprisonment from three to ten years and a fine of Rs. 50,000, which will be imposed on the organisation which undertake such activities.

32. The Uttar Pradesh Prevention of Cow Slaughter (Amendment) Act, 2020 (Act 20 of 2020).
33. Prachi Salve, "Cow Protection Ideologues Are Destroying Livelihoods" *IndiaSpend*, March 10, 2020, *available at*: https://www.indiaspend.com/cow-protection-ideologues-are-destroying-livelihoods (last visited on March 22, 2022).
34. Vatsala Gaur, "Cow slaughter law being misused against innocent persons, says Allahabad High Court", *The Economic Times*, Oct. 26, 2020, *available at*: https://economictimes.indiatimes.com/news/politics-and-nation/cow-slaughter-law-being-misused-against-innocent-persons-says-allahabad-high-court/articleshow/78875582.cms?from=mdr (last visited on March 22, 2022).
35. Bharath Kancharla, "Data: Many states witness a decline in the Cattle population", *FACTLY*, Jan. 5, 2021, *available at*: https://factly.in/data-many-states-witness-a-decline-in-the-cattle-population/ (last visited on March 22, 2022).

The offences under both the ordinance and the Act are cognisable, non-bailable, and subject to a trial in the court of sessions.

The Act, popularly termed as the "Love Jihad Law", has been the subject of a lot of controversy since its enactment. The primary objections against the said law have been that it violates the fundamental rights to liberty, personal autonomy and freedom of individuals with the state entering the realm of personal laws. The statute ultimately undermines the agency of Hindu women who, it would seem from the text of the law, are not equipped to make choices about who they wish to marry or the religion they wish to embrace. Moreover, religious conversion being a purely private matter, prior permission of the state is an unwarranted invasion of one's privacy. Many claim that the "vigorous implementation" of the Act and frequent usage of the term "love jihad" will further marginalise the Muslim community, thereby further widening the communal divide.[36]

Within a month of the ordinance being introduced, 14 cases were registered and 51 arrests were made. Out of these, there were only two cases where the complainant was the concerned woman herself.[37] The ordinance was immediately challenged before the Allahabad high court and the supreme court.[38]

Public Service/Recruitment

The Uttar Pradesh Public Service (Reservation for Economically Weaker Sections) Act, 2020 aims to provide for 10 percent reservation in public services and posts in favour of persons belonging to the economically weaker sections (EWSs). This is in addition to the existing scheme of reservations for the scheduled castes (SCs), the scheduled tribes (STs) 'and the socially and educationally backward classes' in the state. It was passed in accordance with the provisions introduced by the Constitution (One Hundred and Third Amendment) Act, 2019 that enables the state to provide the benefits of reservation on a preferential basis to the EWSs in civil posts and services in government jobs and admission in educational institutions. The Act goes one step ahead and entitles only the candidates of the state to these reservations—i.e., the candidates from outside the state of Uttar Pradesh are not eligible for benefits of reservation as per the proviso clause added to section 3 (1) of the Act.

The definition of the term 'EWS' under the Act is based on the Office Memorandum F.No. 36039/1/2019 Estt.(Res), dated January 19, 2019 of the Department of Personnel and Training, Ministry of Personnel and Public Grievance and Pension, Government of India.[39] The definition covers persons whose family has a gross annual income below 8 lakh rupees and are not covered under the scheme of reservation for SCs, STs and other backward castes.[40] The income shall also include earnings from all sources,

36. Maulshree Seth, "Explained: Uttar Pradesh's 'love jihad' law, and why it could be implemented vigorously", *The Indian Express*, Dec. 5, 2020, *available at*: https://indianexpress.com/article/explained/explained-uttar-pradeshs-love-jihad-law-and-why-it-could-be-implemented-vigorously-7066156 (last visited on March 22, 2022).
37. Manish Sahu, "1 month of UP 'love jihad' law: 14 cases, 49 in jail, woman 'victim' complainant in only two", *The Indian Express*, Jan. 9, 2021, *available at*: https://indianexpress.com/article/india/love-jihad-law-up-police-7124001/ (last visited on March 22, 2022).
38. PTI, "Challenge to law on religious conversions: SC refuses to transfer to itself cases from Allahabad HC", *The Economic Times*, Jan. 25, 2021, *available at*: https://economictimes.indiatimes.com/news/politics-and-nation/challenge-to-law-on-religious-conversions-sc-refuses-to-transfer-to-itself-cases-from-allahabad-hc/articleshow/80448222.cms?from=mdr (last visited on March 22, 2022).
39. Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training, Office Memorandum dated Jan. 31 2019, *available at*: https://dopt.gov.in/sites/default/files/ewsf28fT.PDF (last visited on March 22, 2022).
40. The eight-lakh limit was upheld by the supreme court for the NEET admissions for the year 2021.

including salary, agriculture, business, profession, etc. for the financial year prior to the year of application. Moreover, both the memorandum and the Schedule to the Act clarify certain conditions that should be met for a person to be considered a part of the EWS. A family that owns or possesses any of the following assets shall be excluded from being identified as EWS, irrespective of the family income: (i) five acres or above of agricultural land; (ii) a residential flat of 1000 sq. ft. and above; (iii) a residential plot of 100 sq. yards and above in notified municipalities; or (iv) a residential plot of 200 sq. yards and above in areas other than the notified municipalities.

While applying the land or property holding test to determine EWS status, the property held by a "family" in different locations or different places/cities would be clubbed together. Further, the term "family" will include the person who seeks the benefit of reservation, their parents, their siblings below the age of 18 years, their spouse, and also children below the age of 18 years. If a person belonging to the EWS of citizens gets selected on the basis of merit in an open competition with unreserved candidates, they shall not be adjusted against the vacancies reserved for such category. Where, in any particular recruitment year, a vacancy for EWS cannot be filled up due to non-availability of a suitable candidate belonging to this category, such vacancies shall not be carried forward to the next recruitment year as backlog and the said vacancy shall be filled by eligible candidates of the unreserved category.

Salaries and Allowances

State legislators, in most Indian states, determine their salary and allowances by adopting legislation in their individual state legislatures. Uttar Pradesh lowered the emoluments of its members of the legislative assembly (MLAs), members of the legislative council (MLCs), ministers, speaker, and whips in April 2020. This was done in response to the COVID-19 outbreak so that the state government could use the money for relief work.

The Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) (Amendment) Act, 2020 amended the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 to make the chief minister, every minister, minister of state (independent charge) and minister of state entitled to only 70 percent of their monthly salaries, constituency allowances, and secretarial allowances for the period from April 2020 to March 2021. This was done to generate additional financial resources to meet the economic burden caused by the COVID-19 pandemic.

Moreover, the Act also removed sub-section (3) of section 4 of the 1981 Act, which allowed for a government residence to be allotted to a former chief minister of Uttar Pradesh at their request, for their life, on payment of such rent as may be determined from time to time, by the Estate Department of the state government. This was done in accordance with the 2018 supreme court decision in *Lok Parahari through its General Secretary v. The State of Uttar Pradesh and others.*[41] The apex court had struck down the provision as it was violative of Article 14 of the Indian Constitution. It held that "Section 4(3) of the 1981 Act would have the effect of creating a separate class of citizens for conferment of benefits by way of distribution of public property on the basis of the previous public office held by them." The section was found to be arbitrary and discriminatory, violating the equality clause.

Similarly, the Uttar Pradesh State Legislature (Members Amendment and Pension) (Amendment) Act, 2020 also cut the salaries and allowances of members of the state legislature. It amended sections 3,

41. *Lok Parahari through its General Secretary* v. *The State of Uttar Pradesh and others*, (2018) 6 SCC 1.

4, and 15-A of the Uttar Pradesh State Legislature (Members' Emoluments and Pension) Act, 1980, which dealt with salaries, constituency allowances, and secretarial allowances of all members of the state assembly or council. For the period from April 2020 to March 2021, each provision was changed to incorporate a proviso that decreased the members' benefits to only 70 percent of what they were entitled to. The funds raised by the aforementioned adjustments were predicted to contribute around Rs. 17.50 crores to the state, which has over 500 parliamentarians.

Trade, Commerce and Industries

During the COVID-19 pandemic, many states passed laws to facilitate ease of doing business and to remove operational restrictions to aid revival of industries.[42]

The Uttar Pradesh Micro, Small and Medium Enterprises (Facilitation of Establishment and Operation) Act, 2020 was passed to provide exemptions from certain approvals and inspections required to set up and run micro, small and medium enterprises, for the initial years of establishment and operation. The new Act established two committees at the state and district levels. It further created nodal agencies at both the state and district levels to facilitate investments and establishment of enterprises in the state. Every entrepreneurperson had to file a 'Declaration of Intent' to the District Level Nodal Agency (DLNA) to get an acknowledgement certificate, which had to be issued within 72 hours of receiving the application. On the basis of this acknowledgement, applicants would be able to establish their unit. The certificate would be valid for 1000 days from the day it was issued. In other words, an investor would have 1000 days to get the necessary clearances after the first go-ahead. Moreover, units producing products like tobacco, gutka, pan masala, alcohol, carbonated drinks, firecrackers, plastic bags of 40 microns or less or as stipulated by the government from time to time, or any other item banned by the government, and those units which were identified by the UP-Pollution Control Board as falling under the red category would not be covered by the Act.

Another Act which was passed in 2020 was the Uttar Pradesh Industrial Area Development (Amendment) Act, 2020 to amend the Uttar Pradesh Industrial Development Act, 1976. The ordinance and the pursuant Amendment Act added a proviso to section 7[7] of the Act which allows for the cancellation of the lease deed if any land allotted was not utilised for the purpose for which it was allotted within the period of five years from the date of possession or within the period fixed for such utilisation in the conditions of allotment, whichsoever was longer. In cases where such period has already lapsed before the commencement of the Act, the authority will send a notification to the allottee to utilise the land for the authorised purpose within a period of one year. If the allottee fails to do so, the lease will automatically stand cancelled.

Developers have raised concerns regarding this provision since they may lose their accrued rights in properties. Further, it may have far-reaching consequences not only for the developers but also for banks and similar financial institutions who have granted financial assistance to these developers and taken the land parcels as collateral or security.[43]

42. These include Himachal Pradesh, Karnataka and Punjab.
43. Abhimanyu Chopra and Parag Maini, "The Story of an Urgent Proviso in the Pandemic Driven World!", *AZB Partners*, June 23, 2021, *available at*: https://www.azbpartners.com/bank/the-story-of-an-urgent-proviso-in-the-pandemic-driven-world/ (last visited on March 22, 2022).

Labour Laws

The Uttar Pradesh government issued an order, on May 8, 2020, relaxing the provisions relating to working hours, overtime, rest intervals, etc. as stipulated in sections 51, 54, 56, and 59 of the Factories Act, 1948 retrospectively for a period of three months from April 20, 2020 to July 19, 2020.[44] As per the notification, the working hours were increased from eight to twelve hours per day, with a maximum of 72 hours per week. The maximum period of continuous working hours was fixed at six hours with a minimum break of half an hour. The order further made wages proportional to the existing wages. For example, if wages for eight hours was Rs. 80, then the proportionate wages for 12 hours would be Rs. 120. The need to boost the economy and pull it out of the crisis created by the pandemic was the justification provided for the new rules. The order was challenged by the Uttar Pradesh Worker's Front in the Allahabad high court, which issued a notice to the government. Subsequently, on May 15, 2020, the government withdrew the impugned order.[45]

The Uttar Pradesh government then came up with an ordinance exempting factories and other manufacturing establishments in the state, for a period of three years, from the obligations contained under a majority of key labour laws.[46] With a few exceptions, the ordinance suspended almost all the labour laws. The exceptions included the provisions relating to safety and security of workers under the Factories Act, 1948 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; the provisions relating to the employment of children and women under the Maternity Benefit Act, 1961 and the Child Labour Act, 1986; the Bonded Labour System (Abolition) Act, 1976; the timely payment of wages to employees under the section 5 of the Payment of Wages Act, 1936; and the Employees Compensation Act, 1923 in cases of death and disability arising out of the course of employment.

The changes have met with mixed responses from different stakeholders in the sector. While people supporting the changes claim that this will provide flexibility to industries, others have raised concerns over the possible exploitation and violation of workers' rights.[47] It must be pointed out that the ordinance is an expression of intent by the state as central laws cannot be amended without presidential assent.

Conclusion

Due to the ongoing COVID-19 pandemic and the associated lockdowns, Uttar Pradesh, like all other states, engaged in limited legislative activity in 2020. Most of the bills were first promulgated as ordinances. Functioning for just 13 days, the state passed 31 Acts during the first year of the pandemic. It is noteworthy that 32 out of the 37 bills proposed were passed in the Assembly on the same day as their introduction. This implies that most of the bills were passed during the pandemic period without

44. Notification No. 13/2020/502/36-03-2020-30(Sa.)/2020TC, Labour Department, Government of UP, dated May 8, 2020.
45. Akshita Saxena, "As UP Govt Withdraws Dilution of Labour law: Allahabad HC disposes PIL as 'Infructuous'", *LiveLaw*, May 19, 2020, *available at*: https://www.livelaw.in/news-updates/allahabad-hc-disposes-plea-challenging-relaxation-of-labour-laws-on-working-hours-overtime-etc-157014 (last visited on March 22, 2022).
46. Draft of the Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020, *available at:* https://www.livelaw.in/pdf_upload/pdf_upload-374550.pdf (last visited on March 22, 2022).
47. Apoorva Mandhani, "UP suspends labour laws: What stays, what goes and why 'it is a step in right direction'", *The Print*, May 8, 2020, *available at*: https://theprint.in/india/governance/up-suspends-labour-laws-what-stays-what-goes-and-why-it-is-a-step-in-right-direction/417186/ (last visited on March 22, 2022).

any detailed scrutiny. These include several key legislations, including the Uttar Pradesh Industrial Area Development (Amendment) Act, 2020 and the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2020, which have raised some valid concerns among the citizens of the state regarding the violations of their rights.

Further, detailed observations into the functioning of the seventeenth legislative assembly (2017-2022) reveals that as much as 45 percent of the bills were passed on the same day as their introduction during its tenure. While Assembly procedures provide that a bill upon its introduction may be sent to a select committee for detailed examination, none of the bills during the term of this Assembly were referred to any such committee.[48] This implies that the state lacks a robust committee system, with a substantial number of bills even on important subjects being passed without detailed reflection. This is in contrast with states like Kerala,[49] Maharashtra[50] and Karnataka,[51] which constituted several select committees to scrutinise important subjects/bills.

A thorough analysis of all the bills/ordinances that were proposed by the Uttar Pradesh legislative assembly in 2020 shows that most of the laws passed dealt with either routine changes in the procedural working of different sectors of the state or with mitigating the impact of the pandemic. However, the year also saw the introduction of several legislations that were highly controversial. Some seemed outrightly communal and contrary to the mandate of the Constitution. The Uttar Pradesh Recovery of Damage to Public and Private Property Act, 2020 and publication of personal information of anti-CAA protestors can be seen as one such example. Similarly, the laws related to public security and religious conversions were also problematic.

This controversial law-making seems driven by an aggressive majoritarian agenda informed by the fact that the political party in power in Uttar Pradesh also governs at the centre. Also, it appears that Uttar Pradesh enjoys greater legislative leverage because it sends the largest number of members to the Lok Sabha.

48. *Supra* note 4.
49. Kerala has a total of 14 subject committees. Kerala Legislative Assembly, Committees, *available at:* http://www.niyamasabha.org/codes/comm.htm (last visited on Jan. 21, 2022).
50. For detailed examination of the Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020, the Maharashtra Assembly referred the bill to a Joint Select Committee (of both Houses) in December 2020.
51. The Karnataka Assembly referred the Bruhat Bengaluru Mahanagara Palike (BBMP) Bill, 2020 to a Joint Select Committee (of both Houses) for further examination in March 2020.

WEST BENGAL

Anirban Chakraborty[1]

Introduction

The Constitution of India has adopted a federal system of government with a multi-party polity, distributing legislative powers between the union and the states. In such a system, state governments perform significant legislative functions to discharge their responsibilities effectively. This study aims to inquire into the legislative functions undertaken by the government of West Bengal in 2020.

A literature survey reveals that West Bengal is unique in the policies that the government has formulated and in its system of governance. This is mainly because the successive governments in West Bengal, since the post-emergency era, have been in strong opposition to the political parties ruling at the centre.[2] The state government has made a conscious effort to assert its independent identity and not mechanically submit to the policies adopted by the centre. This is evident from the state legislation's focus on land reforms, economic reforms, poverty alleviation measures, and populist financial assistance programmes. These policy goals have not changed even after the liberalisation of the Indian economy in 1991.[3] The government continues to strongly oppose the union government's policies on privatisation and liberalisation in various sectors of the Indian economy and outright refuses to implement the same in the state. It has developed its independent policy and reform measures and implements them through its unique legislative and executive action.

The year 2020 was a very significant one due to the unprecedented disaster of the global pandemic. Severe measures, like complete lockdown, were introduced to curb the spread of the COVID-19 virus. The measures for containing the spread of the disease severely interrupted the normal functioning of all institutions and seriously impaired the economy and livelihoods of the people. The government's attention during this span was primarily focused on taking steps to augment healthcare and other allied infrastructure to protect the life and livelihood of its citizens.

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1. Associate Professor (Law), NALSAR University of Law.
2. The last time when West Bengal was ruled by a political party which was also in power at the Centre was when the state was governed by the Congress-I party headed by Siddharth Sankar Ray between 1972-1977. This was followed by 34 years of the Left Front government, which was finally replaced by the All-India Trinamool Congress (AITMC) in 2011 in an election they won with an overwhelming majority. The AITMC also won the subsequent state assembly elections in 2016 and continues to remain in power. Both the Left Front and the AITMC are in opposition to the political party in power at the Centre.
3. Suvojit Bagchi, "Bengal through the Decades: The More Things Change, Have they Stayed the Same?" Occasional Paper No. 310, *Observer Research Foundation*, April 2021, *available at*: https://www.orfonline.org/research/bengal-through-the-decades/ (last visited Feb. 10, 2022).

Performance of the West Bengal Legislative Assembly

The West Bengal legislative assembly held two sessions (fourteenth and fifteenth) in 2020. It worked in four sessions for a total of 14 sitting days. Prior to the COVID-19 pandemic-induced national lockdown, it met for 13 days between January 1 and March 24, 2020. After the process of unlocking started from mid-May 2020, the Assembly was convened only once for a single day. The sitting days of the Assembly in 2020 were far less compared to the days for the 2016-2019 period. (See Figure 1.)[4]

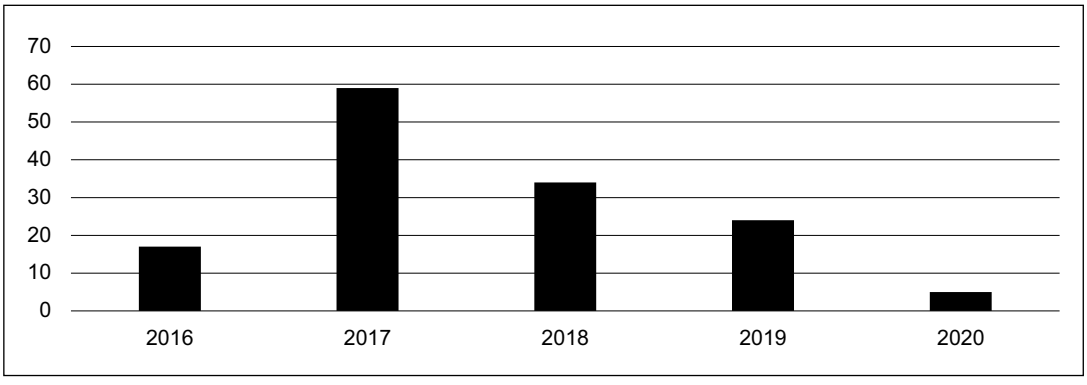

Figure 1: Total number of sitting days of the WB legislative assembly (2016-2020)

It can be inferred from Figure 1 that, in 2020, the Assembly had nearly 60 percent fewer sittings compared to the average annual sitting days between 2016 and 2019 (37 days). Also, when compared with the information on sittings of legislative assemblies in 2020 across states, it appears that the West Bengal legislative assembly held its sittings for 14 days: 40 percent fewer sitting days compared to the national average of 20 days.[5] This comparatively reduced working period of the Assembly in 2020 can be attributed to the COVID-19-induced interruption and the preparation for the state Assembly elections in 2021.

Bills Introduced and Passed

The legislative assembly passed only five bills in 2020.[6] It is far less than the number of bills passed between 2016 and 2019. (See Figure 2.)[7]

4. The information is based on the data published at: Legislative Assembly of West Bengal, Legislative Assembly Bulletin-Part-I, *available at*: http://www.wbassembly.gov.in/ (last visited on Feb. 10, 2022). The WB legislative assembly website does not use stable links for its individual pages and databases. As a consequence in several footnotes across this text, the URL of the website is referenced with the title of the relevant page/database. These can be accessed from the "Legislature Library" tab.
5. 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 Feb. 10, 2022).
6. The list of bills passed in the assembly in 2020:
   The West Bengal Motor Vehicles Tax (Amendment) Bill, 2020; the West Bengal Finance Bill, 2020; the West Bengal Appropriation (No.1) Bill, 2020; the West Bengal Fiscal Responsibility and Budget Management (Amendment) Bill, 2020; the West Bengal Appropriation (No.2) Bill, 2020.
7. The information is based on the data published at: Legislative Assembly of West Bengal, Digital Archive of Bills, *available at*: http://www.wbassembly.gov.in/ (last visited on April 15, 2022). *Supra* note 4 for an explanation for the URL.

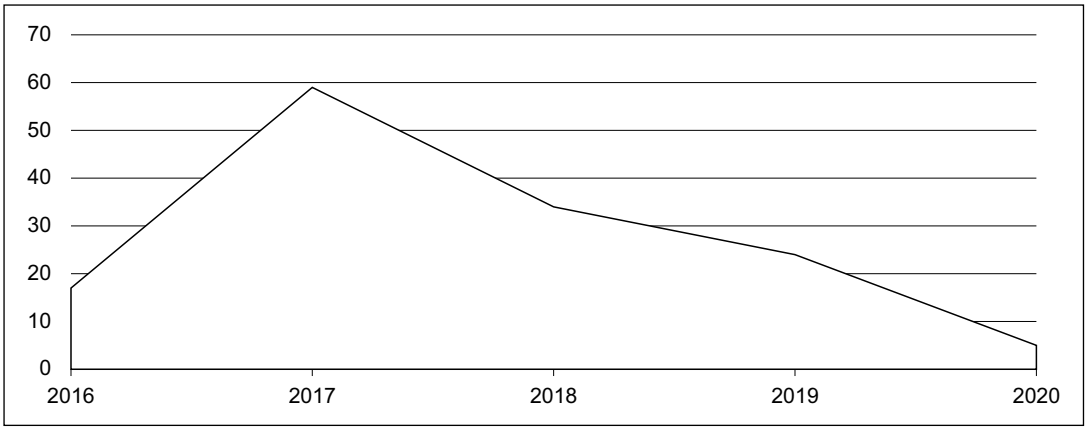

Figure 2: Bills introduced and passed (2016-2020)

Figure 2 reveals that, during the period 2016-2020, an average of 27 bills were passed. Compared with this average, the legislative assembly passed only five bills in 2020, which is almost 78 percent less than the previous years. Also, all the five bills were introduced and passed between January and March 2020. Since the Assembly sat for only one single day between April and December 2020, no bill was introduced, discussed, or passed.

Among the bills passed by the legislative assembly in 2020, three of them were appropriation and fiscal bills. The fourth was an amendment bill to the West Bengal Fiscal Responsibility and Budget Management Act, 2010 (WBFRBMA). This legislation was introduced to bring greater transparency in the fiscal operations of the state. It requires the government to focus on crucial fiscal indicators aiming to eliminate/reduce revenue deficit and fiscal deficits and to ensure prudent debt management. In addition to the usual targets provided under the Act, a set of recommendations has also been provided by the Fourteenth Central Finance Commission to help states meet their fiscal targets. One of the recommendations has been that the state government may amend the FRBM Act to provide for the statutory flexible limits on fiscal deficit, and to provide for a statutory ceiling on the sanction of new capital initiatives to an appropriate multiple of the annual budget provision. The government presented the Midterm Fiscal Policy Statement and Fiscal Policy Strategy Statement 2020-2021[8] in the Assembly on February 27, 2020. The amendments proposed in the WBFRBM (Amendment) Bill, 2021 is in line with the objectives to ensure the smooth fiscal operations of the state government and conduct of fiscal policy in a medium-term framework. The said bill, however, does not have any financial implication on the state to give effect to its provisions.

The fifth bill was also an amendment bill which proposed to amend the West Bengal Motor Vehicles Tax, 1979. The introduction of this bill has a history. The state government had allowed the registration of two-wheelers as 'contract carriage' under the terms of the Rent A Motorcycle Scheme in 2015. Subsequently, it received proposals for allowing the use of two-wheelers as bike-taxis in the state.

8. Government of West Bengal, "Midterm Fiscal Policy Statement and Fiscal Policy Strategy Statement 2020-21" (Finance Department, Feb. 2020), *available at*: http://www.wbfin.gov.in/writereaddata/Fiscal_Policy/FRBM20_Part1.pdf (last visited on Feb. 10, 2022).

Accepting the suggestion for such usage, it issued an order on August 22, 2016 permitting registration of two-wheelers as 'contract carriage' through section 2(7) of the Motor Vehicles Act, 1988. Two-wheelers could now be operated as app-based 'bike-taxis' in the state subject to observation of conditions prescribed in the said order.[9]

But the government had imposed a very steep tax on commercially run two-wheelers, which was why most two-wheeler owners, including those working on e-commerce and food delivery platforms and app-based bike-taxis, did not register their vehicles as 'contract carriage'. This made the government reconsider its existing order. The transport department proposed, in 2019, to reduce the annual road tax for commercial two-wheelers in a bid to encourage bikers on e-commerce, and app-based cab and food delivery platforms to switch from private to commercial licence plates. The West Bengal Motor Vehicles Tax (Amendment) Bill, 2020 was introduced to legally permit the commercial use of motorised two-wheeled vehicles as 'contract carriage'. The bill requires persons and operators wishing to ply motorised two-wheelers for commercial purposes to obtain commercial registration of their vehicles and pay an annual tax of Rs. 780.[10] The assembly passed this bill in March 2020. Subsequently, it was presented to the governor for his assent. Since his assent has not been received, the amendment bill was not notified as an Act, even though it was tabled by the government after obtaining the consent of the governor in 2019.

This withholding of assent may be attributed to the recent discord between the governor and the state government. With reference to another bill when he refused to give his assent, the governor alleged that the government had not provided the clarifications he sought on the bills sent to him for his assent. According to him, he had asked the chief minister for an official report on the debates and relevant details with regard to the bills passed by the Assembly.[11] However, the government and the speaker of the Assembly accused the governor of withholding the bill intentionally by not signing it. Be that as it may, the conflict between the governor and the state has paralysed the legislative process in the state.

Ordinances

The Constitution of India bestows state and central governments with the power to make a law by introducing an ordinance when the legislature is not in session and immediate action is required. State governments are not unfamiliar with making laws by way of ordinances. Especially in 2020, when the average working period of the legislature was severely affected by the COVID-19 pandemic, most states opted for legislating through ordinances; in fact, on an average, more ordinances were promulgated by the states that year than usual.[12] Contrary to this national trend, however, no ordinance was promulgated in West Bengal in 2020 and the practice has not changed subsequently either.

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9. No. 2979-WT/TR/3M-92/2009, Transport Department, Government of West Bengal, dated August 22, 2016, *available at*: https://transport.wb.gov.in/wp-content/uploads/2017/03/Allowing-registration-of-two-wheelers-as-contract-carriage.pdf (last visited on Feb. 10, 2022).
10. Team MP, "Plying of bike taxis to get easier as bill reduces tax, permit fee", *Millennium Post*, March 17, 2020, *available at*: http://www.millenniumpost.in/kolkata/plying-of-bike-taxis-to-get-easier-as-bill-reduces-tax-permit-fee-405650 (last visited on Feb. 10, 2022).
11. Nikita Bishay, "West Bengal Guv Denies Approving Bill Excluding Bally From Howrah Municipal Corporation", *Republicworld*, Dec. 25, 2021, *available at*: https://www.republicworld.com/india-news/politics/west-bengal-guv-denies-approving-bill-excluding-bally-from-howrah-municipal-corporation.html (last visited on Feb. 10, 2022).
12. *Supra* note 5.

From 2016 to 2019, the state promulgated a total of six ordinances, which included the re-promulgation of two ordinances (that is, the same ordinance was issued again after its period of operation had lapsed).[13] This is a trend that is clearly distinct from the practice in the rest of the Indian states. It may be attributed to the sustained rift between the state government and the governor, who the government sees as an agent of the centre. In recent years, these differences have become public. The current governor, Shri. Jagdeep Dhankhar, in his communication to the union government has expressed grave concerns regarding the condition of law and order in West Bengal and the politicisation of the bureaucracy.[14] The state government, in a strong response to the allegations, asked the governor to discharge his role in accordance with the constitution and not on the direction of the centre.[15] The controversy between these constitutional functionaries of West Bengal has received public attention and has, definitely, affected the harmonious working of the state's executive machinery.

Assembly Committees and Resolutions

The growth and development of the West Bengal legislative assembly committees have a history and tradition that dates back to the pre-independence period. After Independence, new rules were framed for the West Bengal legislative assembly and the same came into force from 1961. These rules advised the setting up the following committees: Committee on Public Accounts, Committee of Privileges, Committee on Petitions, Select Committee on Bills, Business Advisory Committee and a Permanent Rules Committee. The introduction of a subject committee system in the late eighties is one of the important developments in the history of this legislature.[16] Forty-four Assembly committees have been constituted to assist the functioning of the sixteenth West Bengal legislative assembly. Among these, 10 oversee the functioning of the business of the House and 25 standing committees deal with a wide range of subjects on the state's legislative business agenda.[17]

According to rule 208A of the Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly, after the conclusion of the general discussion on the budget, the demands for grants of all the departments are required to be referred to the relevant standing committees. Under proviso to sub-rule (1) of rule 209, voting on the demands for grants that have been referred to the standing committees shall only take place after the committees have presented their reports. Accordingly, after the general discussion on the budget on February 15, 2020, the demands for grants were referred to the appropriate standing committees for scrutiny and report. But, due to the COVID-19 outbreak, the Assembly was peremptorily suspended. Consequently, the reports of several standing committees were not tabled in

13. The information is based on the data published in: Legislative Assembly of West Bengal, Digital Archive of Ordinances, *available at*: http://www.wbassembly.gov.in/ (last visited on April 15, 2022). *Supra* note 4 for an explanation for the URL
14. PTI, "Centre receives report from West Bengal Governor on law and order situation in state", *The Economic Times*, Dec. 11, 2020, *available at:* https://economictimes.indiatimes.com/news/politics-and-nation/centre-receives-report-from-west-bengal-governor-on-law-and-order-situation-in-state/articleshow/79676046.cms?from=mdr (last visited on Feb. 10, 2022).
15. ANI, "Bengal government questions governor Dhankhar's letter to CM Mamata on post-poll violence", *Hindustan Times*, June 16, 2021, *available at:* https://www.hindustantimes.com/india-news/bengal-govt-questions-guv-dhankhar-s-letter-to-cm-mamata-on-post-poll-violence-101623809167727.html (last visited on Feb. 10, 2022).
16. *See* Legislative Assembly of West Bengal, Origin and Growth of Committees, *available at*: http://www.wbassembly.gov.in/ (last visited on Feb. 10, 2022). *Supra* note 4 for an explanation for the URL.
17. The information is based on the data available at: Legislative Assembly of West Bengal, Assembly Committees, *available at*: http://www.wbassembly.gov.in/ (last visited on Feb. 10, 2022). *Supra* note 4 for an explanation for the URL.

the House[18], and a resolution was adopted to suspend the application of proviso to sub-rule (1) of rule 209 of the Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly for disposal of all the remaining demands for grants for 2020.[19]

The right of the people in India to petition the legislature and the right of the latter to receive and deal with such petitions have been long recognised by the Assembly. The responsibility to handle this matter falls on the Committee on Petitions of the Assembly. Accordingly, the committee submitted its report to the Assembly on March 17, 2020 outlining the measures to be taken to prevent thalassaemia and the status of thalassaemia screening test centres running in the state.[20]

Also, the legislative assembly by a motion under Rule 169 dated January 27, 2020[21] adopted a resolution against the central government's effort to introduce the controversial Citizenship Amendment Act (CAA) and National Population Register (NRC). The House expressed its solidarity to criticise the CAA and NRC. It resolved that the Act was against the spirit of the Constitution and urged the union government to reconsider its decision.

Four other states passed similar resolutions in 2020.[22] The Kerala government went one step further petitioning the supreme court under Article 131 and challenging the constitutionality of CAA.[23] All the states that opposed CAA are ruled by non-BJP parties. They also opposed the bill in the parliament and the matter is pending before the apex court. However, CAA is a matter covered by the union list, so parliament has the exclusive right to legislate. The resolution passed by the states may have no legal force, but can a state's refusal to enforce a central legislation be only addressed by focusing on the text of the Constitution? Or should these resolutions compel reflection on the Indian federal system, which permits the centre to force states to accept a legislation which they are opposed to? Further, states have to seek the union's approval if they wish to legislate on a matter that conflicts with an existing central legislation. The entire system seems to be fine-tuned towards restricting any real challenge by a state of a central law.

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18. List of Standing Committee Reports submitted to the Assembly before March 17 2020:

    Report of the Standing Committee on Higher Education; Report of the Standing Committee on School Education; Reports of the Standing Committee on Panchayats & Rural and Sundarban Affairs; Report of the Standing Committee on Irrigation & Waterways and Water Resources Investigation & Development; Report of the Standing Committee on Urban Development and Municipal Affairs; Report of the Standing Committee on Fisheries and Animal Resources Development; Report of the Standing Committee on Transport; Report of the Standing Committee on Food & Supplies; Report of the Standing Committee on Information Technology and Technical Education; Report of the Standing Committee on Agriculture, Agricultural Marketing and Food Processing & Horticulture; Report of the Standing Committee on Co-operation and Consumer Affairs.

    The information is based on the data available on Legislative Committees on the West Bengal Legislative Assembly website, *available at*: http://www.wbassembly.gov.in/ (last visited on Feb. 10, 2022).

19. Legislative Assembly of West Bengal, Legislative Assembly Bulletin Part I, Brief Record of the Proceedings of the House, March 17, 2020.
20. *Ibid*.
21. Legislative Assembly of West Bengal, Legislative Assembly Bulletin Part I, Brief Record of the Proceedings of the House, Jan. 27, 2020.
22. Legal Correspondent, "States can pass resolutions against Central laws", *The Hindu*, March 20, 2021, *available at*: https://www.thehindu.com/news/national/states-can-pass-resolutions-against-central-laws-supreme-court/article34112706.ece (last visited on April. 10, 2022).
23. Murali Krishnan, "Kerala moves Supreme Court against citizenship act, becomes first state to challenge Centre on CAA", *Hindustan Times*, Aug. 25, 2020, *available at:* https://www.hindustantimes.com/india-news/kerala-govt-challenges-citizenship-act-in-supreme-court-first-state-to-challenge-centre/story-qQE0eJirdQutcRPxQ9zrGK.html (last visited on Feb. 10, 2022).

Executive Action: Government Schemes

As already observed, after the emergency, the focus of the West Bengal government has been towards introducing strong pro-poor and populist welfare measures and implementing them through local and self-governance institutions. Successive governments have adopted measures and mobilised state resources to give financial aid and subsidies to the poorer sections of the society. Since coming to power in 2011, the present government has continued to pursue this policy. Rather it has introduced many more populist schemes and financial aids so that their benefits reach a larger segment of the population, thereby seeking to strengthen its political support base.

At present, there are approximately 35 such schemes operating in West Bengal. These schemes are piloted by various ministries and departments of the government and delivered through institutions of local and self-governance.[24] These schemes deliver financial assistance to persons in distress, backward communities, forest dwellers, urban slum dwellers, small-scale and cottage industry employees, artisans, and folk and traditional music performers. They also promote empowerment of women and the education of girls.

To promote implementation of its own schemes, the West Bengal government has refused implementation of central schemes.[25] It has even renamed many of the existing central schemes[26] and has issued an official notification declaring that in all the official communications and publicity campaigns[27] only the name assigned by the state to these schemes shall be used. The PM Kisan and Ayushman Bharat schemes have not been implemented in the state as they conflict with the corresponding Krishak Bandhu and Swashtya Sathi schemes introduced by the state. However, the state has defended its position by stating that its schemes have a wider reach and offer greater benefits for its citizens. It has also argued citing the comparison between the Ayushman Bharat and Swashtya Sathi schemes, that the latter covers everyone without health insurance and has empanelled private hospitals along with government hospitals in the

24. For detailed information about the various welfare schemes of the West Bengal government visit: West Bengal State Portal, Schemes, *available at*: https://wb.gov.in/government-schemes.aspx (last visited on Feb. 10, 2022); WBXpress, West Bengal Government Schemes, *available at*: https://wbxpress.com/schemes/ (last visited on Feb. 10, 2022).
25. The Smart Cities Scheme had initially proposed to develop four smart cities in the state. But WB pulled out as in its opinion the said scheme would promote inequitable development. Instead it introduced the Green Cities Scheme with the plan to develop 10 green cities over five years, which would also be eco-friendly and smart. The government also pulled out from the Swachhata Survekshan Survey since it had its own scheme—Mission Nirmal Bangla—to make the state open-defecation free. Moushumi Das Gupta, "Mamata vs Modi govt: 5 central schemes stonewalled by the West Bengal CM", *Hindustan Times*, April 6, 2017, *available at*: https://www.hindustantimes.com/india-news/mamata-vs-modi-govt-5-central-schemes-stonewalled-by-the-west-bengal-cm/story-DtF3ZJKSvrMOiE8etkd03J.html (last visited on Feb. 10, 2022)
26. For instance, the Pradhan Mantri Gram Sadak Yojana and the Pradhan Mantri Awas Yojana-Grameen have been renamed Banglar Gramin Sadak Yojana and Banglar Griha Prakalpa. Similarly, Aajeevika, the National Rural Livelihood Mission, has been renamed in West Bengal as the Annadadhara West Bengal Rural Livelihood Mission.
27. Manogya Loiwal, "Didi vs Modi: Mamata Banerjee renames Central government schemes, BJP leader calls her Babur", *India Today*, Apr. 24, 2017, *available at*: https://www.indiatoday.in/india/story/mamata-banerjee-renames-central-government-schemes-in-west-bengal-973281-2017-04-24 (last visited on Feb. 10, 2022).

state.[28] The West Bengal government because of its conflicts with the centre and possible legal issues arising from implementing overlapping schemes, has preferred to use executive directions instead of legislation to execute these schemes. Therefore, a chunk of the legislative work of the state government was transacted through circulars and notifications.

The official website of the state government of West Bengal shows that it issued 162 circulars and notifications in 2020.[29] On March 16, 2020, the government issued a regulation under the Epidemic Diseases Act, 1897 called the West Bengal Epidemic Disease, COVID-19 Regulations, 2020.[30] The regulation empowered the government and local authorities to issue appropriate directions to prevent the spread of COVID-19. A majority of the circulars and notifications passed in 2020 are based on this regulation and relate to conduct of official business during the pandemic, authorised guidelines and standard operating procedures (SOPs) related to health and safety measures for containing the spread of COVID-19, including guidelines imposing restriction of movement of persons, goods, and services (non-essential) during the lockdown; testing and quarantine rules; identification of containment areas; measures for movement restriction; and guidelines for unlocking of various public facilities in the containment areas. A government order was also issued by the finance department for constitution of the West Bengal State Emergency Relief Fund on March 23, 2020. The resources for the fund would be collected through voluntary contributions and donations by citizens, charitable organisations, and private and public bodies. The state government would be able to use the fund to create or upgrade infrastructure and to acquire other facilities to cope with the crisis caused by the pandemic. A managing committee was established to oversee the utilisation under the chairpersonship of the chief secretary.[31]

28. Comparative Table of the conflicting central and state schemes

Central Schemes	**West Bengal Schemes**
PM KISSAN The scheme was launched in February 2019 and provided Rs. 6000 as financial assistance to farmers in three instalments by direct benefit transfer. The scheme was initially aimed at small and marginal farmers but was later extended to all farmers.	KRISHAK BANDHU In January 2019 the department of agriculture, government of West Bengal introduced the Krishak Bandhu Scheme with an aim to provide financial assistance to all farmers of West Bengal for agricultural purposes and to provide social security to the family in the event of the untimely death of the farmer. Direct benefit under the scheme includes financial assistance for cultivation purpose up to a maximum of Rs. 10,000 per annum and a minimum of Rs. 4,000 per annum, receivable in two equal instalments.
AYUSHMAN BHARAT Ayushman Bharat Pradhan Mantri Jan Arogya Yojana is a national public health insurance fund of the government of India that aims to provide free access to health insurance coverage for low-income earners in the country. Roughly, the bottom 50 percent of the country qualifies for this scheme.	SWASHTYA SATHI The scheme offers the citizens of West Bengal, a smart card through which they can avail of healthcare benefits cover up to Rs. 5,00,000. The scheme was officially launched on December 30, 2016 It is a cashless health scheme to get all the health-related cost benefits.

29. Data from: West Bengal State Portal, Notifications, *available at*: https://wb.gov.in/documents-notification.aspx (last visited on Feb. 10, 2022).
30. No. H&FW/118/20, March 16, 2020, *available at*: https://www.wbhealth.gov.in/other_files/118.pdf (last visited on Feb. 10, 2022).
31. No. – 50-SB(SM)-20, Finance Department, Government of West Bengal, dated March 23, 2020, *available at*: https://wb.gov.in/upload/MCLNEWS-200324130539636.pdf (last visited on April 15, 2022).

Three new schemes were notified in 2020 to provide financial assistance to: (a) labourers/daily wage earners/workers;[32] (b) migrant workers stranded in different parts of the country;[33] and (c) self-employed persons like hawkers.[34] These schemes targeted those who had lost employment or livelihood opportunities due to COVID-19 or could not conduct their businesses due to lockdown restrictions, or were passing through severe financial distress, and did not have any alternative sustainable source of income. The schemes provided a one-time ex-gratia payment of Rs. 5000, Rs. 1000, and Rs. 2000 respectively. It was mandatory that the beneficiaries be permanent residents of West Bengal, be the sole breadwinner of the family, and not be a beneficiary of any other social scheme of the state. These schemes were to be implemented, monitored, and supervised by the labour department, disaster management department, and the urban development & municipal affairs department of the government of West Bengal respectively. The application, verification, and disbursal of the amount in all these schemes was to be through the district magistrate in the districts or the municipal commissioner for the Kolkata municipal corporation area. The schemes were to remain operative for the period notified by the state government.

The state government, by a notification dated October 1, 2020, introduced a state welfare scheme for poor priests belonging to the Hindu, Christian, Jain, and Parsi communities. Under the scheme, poor priests would receive a monthly financial assistance of Rs.1000. Those who did not have a pucca dwelling would get a grant of Rs 1,20,000 for the construction of a house. About 8000 beneficiaries were estimated to benefit from the welfare scheme.[35]

Further, in 2020, the government also introduced a new scheme merging all existing pension schemes under one umbrella scheme. This new scheme added two new old-age pension schemes for the scheduled castes and scheduled tribes. It also introduced a uniform monthly pension of Rs. 1000 per month for beneficiaries of all the existing schemes. The finance department assumed the overall responsibility to ensure the effective management and timely implementation of this scheme.[36]

Conclusion

The study concludes that 2020 was not an extremely productive year for the West Bengal legislative assembly. This can be attributed to reduced sittings of the Assembly due to the COVID-19 outbreak and the pre-occupation with the Assembly elections. The survey also reveals that the differences with the governor impeded not just the passing of legislation but even the promulgation of ordinances. The state undertook most of its governance relying upon subordinate legislations, schemes and programmes. Throughout this period, the government of West Bengal aggressively maintained its differences with the centre and continued its distinct and unique pattern of working.

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32. Prachesta, No. 1572-F(Y), Department of Finance, dated April 10, 2020, *available at*: https://wb.gov.in/upload/MCLNEWS-200420181145543.pdf (last visited on Feb. 10, 2022). Effective from April 15 to May 15, 2020.
33. Sneher Paras, No.106PSDM&CD/2020, Department of Disaster Management and Civil Defence, dated April 20, 2020, *available at*: https://wbxpress.com/sneher-paras/ (last visited on Feb. 10, 2022). Effective from April 20 to May 3, 2020.
34. Hawker Support Scheme, 2020, No. 877/UDMA-15011(22)/7/2020-LS-MA, Department of Urban Development and Municipal Affairs, dated Oct. 14, 2020, *available at*: https://wbxpress.com/hawker-support-scheme-2020/ (last visited on Feb. 10, 2022).
35. State Welfare Scheme for Purohits, NO. 2164-ICA(N), Government of West Bengal, dated Oct. 1, 2020, *available at*: https://wb.gov.in/upload/state_welfare_scheme.pdf (last visited on Feb. 10, 2022).
36. Jai Bangla Scheme, No. 1157-F(Y), Department of Finance, dated March 6, 2020, *available at*: https://wbxpress.com/new-old-age-pension-schemes-jai-bangla-scheme-2020/ (last visited on Feb. 10, 2022). Effective from Apr. 1, 2020.

The Constitution of India conferred the power to make laws on both the Union and the States. Even as the laws of the Union are widely disseminated and closely studied, there is large-scale ignorance on the laws of the States. How do the States use their law-making powers under the State and Concurrent list? Are there differences in how the powers are employed, depending upon whether the Union and the States are being governed by the same or different political parties.

In order to understand how Indian federalism operates on the ground, NALSAR University of Law is launching this Annual Survey of State Laws in India, which will closely study the law-making efforts of States.

The journal will undertake this exercise annually. In this inaugural issue, legal scholars and practising advocates are examining how 18 States of the Union used their law-making powers in 2020. The States covered are Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu, Telangana, The National Capital Territory of Delhi, Uttar Pradesh and West Bengal.

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