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DreamIAS

International

What next for President?

- Donald Trump became the third President in American history to be impeached on Wednesday night with a majority of Representatives voting in favour of the two articles of impeachment drawn up by House Democrats. The articles, essentially the charges against the President, accuse him of abuse of power and obstruction of Congress, both related to the Ukraine scandal.

  How the House voted?

  It was certain before the vote that the impeachment resolution would go through the House of Representatives, which is controlled by the Democrats. In the 435-member House, the Democrats have 233 members, while the Republicans have 197. The House voted on the impeachment articles largely along party lines. The first article got 230 votes. The tally on the second article was 229-198. Two Democrats — Reps. Jeff Van Drew of New Jersey and Collin Peterson of Minnesota, both from districts that backed Mr. Trump in the 2016 presidential election — voted against both articles. Rep. Jared Golden of Maine, whose district was also carried by Mr. Trump in 2016, voted for the first article but against the second. Rep. Tulsi Gabbard (D) of Hawaii voted “present” on both votes.

  Why Trump was impeached?

  Both articles of impeachment are related to the Ukraine scandal, which means the House did not consider the Robert Mueller report on Russia’s alleged interference in the 2016 election and Mr. Trump’s handling of the issue. The first article, on abuse of power, is about Mr. Trump’s conduct in the Ukraine scandal. The Democrats allege that the President abused his power by putting pressure on Ukraine’s President Volodymyr Zelensky to launch a probe against Joe Biden, the former Vice-President and a Democratic presidential candidate for the 2020 presidential election, and his son Hunter Biden. The President is accused of withholding both a White House meeting and military aid to Ukraine. The article states that Mr. Trump “corruptly solicited the government of Ukraine to publicly announce investigations” into Mr.

Biden and into "a discredited theory" that Ukraine interfered with the 2016 presidential election. The second article, on obstruction of Congress, alleges that Mr. Trump obstructed the Congressional impeachment inquiry by refusing to cooperate with it. The President, who has denied all charges, urged several witnesses not to testify before the House panel and asked the White House and other government departments not to comply with House subpoenas. President Trump "has directed the unprecedented, categorical and indiscriminate defiance of subpoenas issued by the House of Representatives pursuant to his 'sole Power of Impeachment'," states Article II.

Is Trump out of office?

No. Impeachment by the House doesn't remove an American President from office immediately. Impeachment means a majority of House Representatives have approved the articles raised against the President, setting the stage for his trial in the Senate. After the trial, the Senators will vote on his conviction. A President can be convicted and removed from office with the support of at least two-thirds of the Senate (that is 67 Senators in the 100-member U.S. Senate). In the current Senate, the Republicans have a majority with 53 seats, while the Democrats have 47 (including two Independents). This means, for Mr. Trump to be convicted, the Democrats have to make sure that none of their Senators crosses the party line and at least 20 Republicans do that and vote for the conviction — an impossibility given the partisan mood in the Capitol. So far, the Republicans have rejected the charges against the President. So it's almost certain that Mr. Trump will be acquitted in the Senate.

Then why the impeachment?

Democrats say it is their constitutional duty to start the impeachment proceedings as the President's actions threaten the Constitution. The underlying message is that as the next election is less than a year away, the voters can decide whether they want to re-elect a President who has been impeached by the House. It's also about bad legacy for Mr. Trump. He's gone down in history as the third President to be impeached in the U.S. — the first was Andrew Johnson in 1868 after a

showdown with Congress over his dismissal of the Secretary of War and the second was Bill Clinton in 1998-99 over the Monica Lewinsky scandal. Both were acquitted in the Senate. Former President Richard Nixon, embroiled in the Watergate scandal, resigned in 1974 before the impeachment proceedings could begin. So, the impeachment has put Mr. Trump in rare company. It is not clear how the impeachment would impact the 2020 election. A Wall Street Journal/ NBC News survey, released on Wednesday, suggests that Americans are split 48-48% on whether to sack Mr. Trump from office. Some 90% of Republicans oppose the impeachment, while 83% of Democrats support it.

What is the CROWN Act?

- In July this year, California became the first state in the US to make discrimination over natural hair illegal. New York followed suit and now New Jersey has become the latest US state to pass such a legislation, called Creating a Respectful and Open World for Natural Hair (CROWN) Act. CROWN aims to protect people of colour from being discriminated against for their natural hair, especially at the workplace. The legislation takes into account discrimination because of traits that are historically associated with a particular race, "based on hair texture and style". It also takes into account the historical norms and societal norms that equated "blackness" and its associated physical traits such as dark skin, kinky and curly hair "to a badge of inferiority, sometimes subject to separate and unequal treatment", the California version of the law states. One of the reasons for such legislation is to separate "professionalism" from features and mannerisms, thereby getting rid of workplace grooming or dress code policies that would deter black people from applying. A study conducted recently by Unilever-owned brand Dove concluded that black women were 80% more likely to change their natural hair in order to meet social norms or expectations at work. It also said that black women are 50% more likely to be sent home or to know of another black woman who has been sent home from the workplace because of her hair.

What poll result means for Brexit, Scotland, and Johnson's Britain

- British Prime Minister Boris Johnson swept an election that left various takeaways, the most important of which is the likelihood of Brexit being put on the fast track. Other takeaways and landmarks include the biggest defeat of the Labour Party since 1935, Labour leader Jeremy Corbyn's decision not to lead the party in future elections, a sweep of Scotland's seats by the Scottish National Party, and its implications on the possibility of independence. Johnson's Conservative Party won 365 seats in the 650-member Parliament. The Labour Party won 203, and the Scottish National Party 48.

  So, how will Brexit proceed?

  So far, no plan offered in Parliament had won majority support. Now, because of the sheer size of the victory, Johnson's plan is more likely to find support, in spite of the many factions created by opinions on Brexit. Besides, the vote can potentially be interpreted as public endorsement for Johnson's plan, although that is not really the case. With Parliament due to sit next Friday, it is expected to try and pass Johnson's Withdrawal Agreement Bill this month itself. After that, Britain has to negotiate the terms of a treaty, including its time-frame, with the European Union. "Brexit day" is on January 31, but the process of implementation will continue long after that.

  How does one read the performance of the Scottish National Party?

  First, it would be too much to expect that the SNP's performance will eventually lead to Scottish independence. Nevertheless, the SNP's sweep of Scotland is immensely significant, shutting out both Labour and Conservative parties. In a referendum in 2014, Scotland had rejected independence. But opinion polls have also shown that the Scottish population is by and large in favour of remaining in the European Union. Will Brexit, therefore, lead to calls for independence? Although the SNP is against Brexit, the vote does not necessarily mean a referendum for Scottish independence. It may simply be that the SNP is more popular with Scottish voters than the Labour or Conservative Party. Even if Brexit, when it happens, revives pro-independence sentiment (which would help the SNP further), independence is a long road with many procedural hurdles.

  What does the result mean for Britain, beyond Brexit?

The size of the victory sets the stage for a Britain of Johnson's ideological vision — nationalism, with tougher laws on immigration. Britain will also have to deal with Brexit's effect on its economy. This includes the long process of new bilateral trade agreements with many other countries.

Justice for the Rohingya

- The case brought by Gambia, a tiny west African state, on behalf of the Organisation of Islamic Cooperation, pertains to alleged genocide in 2017 committed by the Myanmarese military. The forces have insisted that their actions were merely in response to the armed insurgency, notably by the Arakan Rohingya Salvation Army. The UN and several rights groups have documented orchestrated incidents of torched villages, mass rape and other atrocities by the military, forcing over 700,000 Rohingya to flee to Bangladesh. Rendering the lot of the Rohingya in Myanmar's Rakhine state particularly vulnerable is the denial of citizenship and the reference by nationalist sections to them as illegal Bengali immigrants. Oddly enough, arguing the defence of the junta's actions at the ICJ was Nobel Peace Laureate and Myanmar's leader Aung San Suu Kyi, whose National League for Democracy swept to power in 2015. She asserted that the Army had acted proportionately in countering the rebels and accused Gambia of misrepresenting the situation, while critics point out that she downplayed the extent of the violence and official failure to intervene. Observers highlight the absence of an explicit reference to the Rohingya in her testimony, much like her equivocation after the 2017 carnage and claims of fake news. She has even been accused of choosing to argue the defence in person with an eye on the 2020 general election. Lawyers representing Myanmar insisted that while violent crimes were committed during the conflict, motives of genocide against the community could not be imputed against the authorities. The ICJ, which adjudicates disputes between countries, has handed down guilty verdicts in a few cases relating to crimes of genocide. But crucially, it has stopped short of pinning the blame directly upon states as in the 2007 ruling on the Bosnian war of the preceding decade, relying on a differentiation

between ethnic cleansing and genocide. The challenges of establishing conclusive proof of the intention to extirpate entire communities underlies this caution. A decision regarding genocide relating to the atrocities against the Rohingya is not expected any time soon. The more urgent concern before the court is Gambia's petition seeking an injunction that the violence against the community cease forthwith and the government guarantee immediate protection. Ms. Suu Kyi must heed that call without reservations.

Trial and death: The Pervez Musharraf story

- A special court in Islamabad on Tuesday sentenced former military ruler General Pervez Musharraf to death for high treason under Article 6 of Pakistan's Constitution.

  ARTICLE 6 says: "Any person who abrogates or subverts or suspends or hold in abeyance, or attempts or conspires to abrogate or subvert or suspend or hold in abeyance the Constitution by use of force or show force or by any other unconstitutional means shall be guilty of high treason."

  THE PUNISHMENT for high treason, as per Pakistan's High Treason (Punishment) Act, 1973, is death or life imprisonment.

  AN APPEAL against the verdict will lie in Pakistan's Supreme Court. Even if the top court upholds the special court's verdict, the country's President can pardon him under Article 45 of the constitution: "The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority." Pakistan's army has already declared that Musharraf "can surely never be a traitor", and that the "armed forces expect that justice will be dispensed in line with the constitution of the Islamic Republic of Pakistan". In any case, it is not expected that Musharraf, who is in self-imposed exile in Dubai, will return to Pakistan to carry the case through to the end.
- A civilian court in Pakistan sentencing a former Army chief and coup leader Pervez Musharraf to death is nothing short of an earth-shaking moment for a country that has had a long history of legitimising rule-by-khaki. Whatever be the merits or demerits of the judgment — and

the legal story is by no means over — the fact remains that a special court comprising Peshawar High Court Chief Justice Waqar Ahmad Seth, Justice Nazar Akbar of the Sindh High Court and Justice Shahid Karim of the Lahore High Court, in a 2-1 verdict, has created history. The three military dictators who preceded Gen. Musharraf — Ayub Khan, Yahya Khan, Zia-ul-Haq — faced no problems from the judiciary. The Supreme Court conveniently unleashed the "doctrine of necessity" to dismiss challenges to martial law imposed by them. Interestingly, the trial and sentence was not for the original coup against civilian Prime Minister Nawaz Sharif back in October 1999, but when Gen. Musharraf, who is currently in Dubai, imposed a state of emergency in November 2007. At the time, he held twin jobs — President and Army chief. It's clear that the Pakistani establishment — military and civil — was aware that something was cooking and had moved the Islamabad High Court to ensure that the special court did not pass a verdict in the Musharraf matter. This sudden change in position by the Pakistan Tehreek-e-Insaaf (PTI) government was much commented upon in the country since Prime Minister Imran Khan was a die-hard opponent of any compromise on the issue of Musharraf's trial. It could also explain the sudden tough line taken by the Chief Justice of Pakistan in the matter of current Army chief Qamar Javed Bajwa getting an extension from Mr. Imran Khan for three years. Given that the Army has always been an untouchable institution for civilians — both executive and judiciary — this sign of independence displayed by the special court is extraordinary. As we know, the Pakistani Army, in a quiet and unseen way, can easily sway judicial verdicts one way or the other. With this special court, the Army may have run into a wall. For the current Army chief and the institution, this verdict raises an existential question — what happens if the military has to stage another coup? And what happens when you are unable to protect even your former chief? Simple: you look weak and just like any other frayed Pakistani civilian institution. In 1979, Pakistani dictator Zia-ul-Haq sent former (Sindhi) Prime Minister Zulfiqar Ali Bhutto to the gallows in a murder case while deposed (Punjabi) Prime Minister Nawaz Sharif escaped with life imprisonment in 2000 on terrorism and hijacking charges. Eventually,

Mr. Sharif went to Saudi Arabia as part of a deal with Gen. Musharraf. Let us remember that Gen. Musharraf is a mohajir from Daryaganj in Delhi and not an influential Punjabi like Mr. Sharif. Usually, the military holds court to sentence civilians. But the roles have been reversed in Pakistan.

What does the doping ban mean for Russia?

- On December 9, the World Anti-Doping Agency (WADA) announced a decision to ban Russia from global sporting competitions for a period of four years. The 12-member WADA executive committee voted unanimously to declare the Russian Anti-Doping Agency (RUSADA) "non-compliant" with global anti-doping rules. The move was a ratification of the findings by the independent Compliance Review Committee (CRC) which had recommended that Russia be banned. The anti-doping watchdog's decision is expected to affect Russia the most at the 2020 Tokyo Olympic Games and the 2022 Beijing Winter Olympics where the nation's flag, name and anthem will not be allowed.

  What triggered the ban?

  It dates back to the lead up to the 2016 Rio Olympic Games when an independent commission set up by WADA found a "deeply rooted culture of cheating" in Russian athletics. Barely weeks before the Games, whistle-blower reports alleged that Russia ran one of the most sophisticated doping programmes in the world in which the Russian sports ministry, the intelligence service and the country's anti-doping experts colluded to hide large-scale violations. The 2014 Winter Olympics in Sochi — in which Russia topped the medals tally — was under the scanner, where it was alleged that dope-tainted urine samples were replaced with clean ones. It led to a series of sanctions; the IAAF (now called World Athletics), the world athletics' governing body, suspended Russia's athletics federation (a ban that continues till date) before the International Olympic Committee (IOC) and WADA followed suit by de-recognising the Russian Olympic Committee (ROC) and RUSADA respectively. Last September, as part of the resolution of the case, WADA threw a lifeline by asking Russia to turn over raw data

stored in its Moscow laboratory in order to corroborate the findings in the whistle-blower reports. Russia reluctantly agreed, only for WADA to now rule that Russia had tampered with this evidence too, leading to the latest reprimand.

How far does the ban go?

Apart from the Olympics, the ban can extend to the 2022 FIFA World Cup in Qatar, provided Russia qualifies. Sports and government officials from Russia will not be able to attend competitions, and Russia cannot host international events during the four-year period. It does not however apply to Euro 2020 which is considered a continental (and not global) football competition and Russia will remain a co-host. WADA's very own Athlete Committee, though, is dissatisfied and has termed the sanctions piecemeal. Even as Russia, the nation, stands barred, individual Russian athletes deemed untainted can still participate as neutrals, like they had at Rio and the 2018 PyeongChang Winter Games (South Korea). In the latter, Russia's men's hockey team played as the "Olympic Athletes from Russia" and even won the gold medal. The only meaningful action, according to the Athlete Committee, is a complete ban on Russian participation. The legendary Edwin Moses, the current chairman of the United States Anti-Doping Agency and a two-time Olympic gold medallist, said anti-doping leaders and the IOC have prioritised Russian sentiments over those of clean athletes from elsewhere. Moses told The New York Times recently: "The Russians are asserting their athletes that may be clean deserve the opportunity to compete. They destroyed all the evidence that could have exonerated them."

What is the International Olympic Committee's stand?

The IOC, under its president Thomas Bach, has always opposed a blanket ban. He has maintained that he favours "individual justice over collective punishment". An athlete whose views have played a significant role in shaping the IOC's thinking is Penelope (Penny) Heyns, a South African gold-medallist in the 100-and 200m breaststroke events at the 1996 Olympics. In an interview to The New York Times, she said it would be wrong to penalise an entire generation of Russian athletes for the misdeeds of their predecessors. "They were

10 or 11 when all of this was going down; they are not part of the system," Heyns said, referring to a swimming event where young Russian swimmers participated. "It's our duty to ensure all clean athletes have the right to compete, including those from Russia who can honestly prove their innocence." However, unlike during the Rio Olympics, where the IOC Executive Board had left the decision to allow Russian teams to individual sports federations, the orders this time are expected to come from the very top. Immediately after the CRC made its recommendations public, the IOC said that it will support "the toughest sanctions against all those responsible" and urged WADA "to take further action given the seriousness of the manipulation". Post ratification, the stance has remained unchanged. Seen along with WADA's standard code on compliance, the governing bodies of different sports are likely to enforce the strictures in a similar manner.

What next for Russia?

Russia has three weeks (from the date of the order) to appeal at the Court of Arbitration for Sport (CAS) and the signs are that it will. According to Michael McCann, Sports Illustrated's legal analyst, CAS would consider the appeal under "de novo review". This is a form of appeal in which the court holds a trial as if no prior trial had been held, thus providing a window to produce new evidence and arguments. A line of defence already advanced by Russia is to discredit the whistle-blower, Grigory Rodchenkov, the former head of the Moscow lab who is now under the protection of the US Federal Witness Protection Program. Generally, an arbitration is expected to take six to 12 months, which means that regardless of whether an appeal is filed, Russia will not be present at the Winter Youth Olympic Games that starts in Lausanne, Switzerland from January 9, 2020.

Foreign Affairs

Calling the U.S.'s bluff in 1971 (Zorawar Daulet Singh - fellow at the Centre for Policy Research)

- As we remember the liberation of Bangladesh this week more than four decades ago, it is worth recalling the geopolitics that made it possible. By 1969, Prime Minister Indira Gandhi and her advisers were aware that the U.S.'s feelers to China could potentially come at a cost to India's security. The Sino-Soviet split meant that Moscow had looked at geopolitical developments with a similar perspective. By July 1971, the veil had been lifted. Pakistan had served as a middleman in the U.S.-China detente. By December 1971, it was crunch time as the fate of their ally hung in the balance. The U.S. aircraft carrier 'Enterprise' was despatched to the Indian Ocean as a gambit to raise Pakistan's morale. At a meeting chaired by Mrs. Gandhi to assess the implications of the Seventh Fleet's presence in the Bay of Bengal, her adviser D.P. Dhar urged India to leverage the special understanding that had been formalised in August, "What is the point of India having signed the Indo-Soviet treaty of Peace, Friendship and Cooperation, if India cannot call this bluff?" Then, on December 14, Mrs. Gandhi's confidant P.N. Haksar cabled Dhar in Moscow saying it was necessary "to make a public announcement carrying the seal of the highest authorities in the Soviet Union that involvement or interference by third countries... cannot but aggravate the situation". Shortly thereafter, the Soviets "sent a top-secret message to Nixon" warning the U.S. "against involvement or interference".

  Entry of Soviet naval vessels

  Naval units from the Soviet Pacific Fleet had already been dispatched. The U.S. was aware that the Soviet Navy had entered the Indian Ocean on December 5 and by December 7 was "approximately 500 nautical miles east of Ceylon (Sri Lanka)." On December 8, U.S. National Security Adviser Henry Kissinger admitted that given the Russia factor, "I must warn you, Mr. President, if our bluff is called, we'll be in trouble... we'll lose." On December 11, Kissinger briefed President Richard Nixon, "16 Soviet naval units are now in the Indian Ocean area, including three

space support ships. Communications intelligence indicates that most of the ships are near Ceylon and Socotra." The vessels were armed with anti-ship cruise missiles capable of destroying U.S. warships and escorted by nuclear submarines. There was no longer any ambiguity about what the Indo-Soviet Treaty meant in the unfolding situation. The White House had also been hoping for some sort of a Chinese move to complicate India's military operations. On the same day, Nixon told Kissinger, "a movement of even some Chinese toward that border could scare those goddamn Indians to death."

China doesn't take the bait

On December 10, in a secret meeting in New York, Kissinger told Huang Hua, China's official at the UN, that the U.S. was "moving a number of naval ships in the West Pacific toward the Indian Ocean: an aircraft carrier accompanied by four destroyers and a tanker, and a helicopter carrier and two destroyers." Kissinger also offered to provide "tactical intelligence" on "the disposition of Soviet forces" on China's borders, and added, if the Chinese "were to consider the situation on the Indian subcontinent a threat to its security, and if it took measures to protect its security, the U.S. would oppose the efforts of others to interfere with the People's Republic." The move was aimed to kill several birds with a single stone. But China didn't bite. Beijing feared that even limited coercive actions against India would invite immediate reprisals from Moscow. In the light of Russia's dramatic military escalation to Chinese provocations in their 1969 border crisis, Chairman Mao Zedong was not going to take a chance again. Indeed, a few months earlier, Soviet Defence Minister Andrei Grechko had plainly told Dhar, "the Chinese were aware of the superiority of Soviet forces on the Eastern borders and this 'had downed their tail'." For China to "invite a conflict" after the conclusion of the Indo-Soviet Treaty would be tantamount to "courting a disaster". Later, during the Nixon-Mao summit in 1972, Zhou Enlai told Kissinger that the U.S. bluff had been called by the Soviets. On December 13, the Soviet Ambassador to India, Nikolai Pegov, reassured New Delhi that Moscow would counteract any moves by the U.S. or China. And, if Beijing decided to intervene in Ladakh, Moscow "would open a diversionary action in Xinjiang." Three days later, the

Pakistan Army surrendered. Looking back, we can see that Indian policymakers achieved something remarkable in managing the geopolitical contradictions. They crafted a partnership with the Soviets to offset what was a formidable U.S.-Pakistan-China front. The nuggets also reveal how seriously China and the U.S. took Indian countermeasures and Moscow's resolve to ensure that its ally emerged victorious.

Defence ties to get push at '2+2' with U.S.

- Enhanced defence cooperation, furthering their Indo-Pacific strategy, and discussions on global challenges, including U.S. policy in Iran and Afghanistan, are likely to feature at the top of the agenda as External Affairs Minister S. Jaishankar and Defence Minister Rajnath Singh sit down to the second "2+2" combined ministerial meeting with their U.S. counterparts, Secretary of State Mike Pompeo and Secretary of Defence Mark Esper. On the defence front, the two sides are expected to sign the Industrial Security Annex (ISA) and review steps being taken to operationalise the foundational agreement Communications Compatibility and Security Agreement (COMCASA) which was signed during the previous 2+2 talks. However, discussions on the last foundational agreement, Basic Exchange and Cooperation Agreement for Geo-spatial Cooperation (BECA) are not concluded yet, as some differences still remain, official sources said. The ISA is crucial for U.S. companies bidding for big ticket Indian deals to partner with Indian private industry, especially the multi-billion dollar deal for 114 fighter jets. As part of efforts for co-development and co-production of military hardware, a Standard Operating Procedure (SOP) for Defence Technology Trade Initiative (DTTI) is also expected to be signed that "will act as a guide to coordinate projects." In addition, there are several big ticket defence deals in the works, the progress of which will be reviewed. These include the 24 Lockheed Martin MH-60R Multi-Role helicopters worth $2.4bn and 13 BAE Systems built 127 mm MK-45 Naval gun systems, among others. However, threat of U.S. sanctions under CAATSA over S-400 air defence purchases from Russia remains a sticking point. As part of the larger Indo-Pacific focus, the evolving

cooperation between the Quad grouping comprising India, Australia, Japan and the U.S. will also be discussed. While Washington has been pushing for greater military engagement, New Delhi has stated that it doesn't see any military role for the grouping. "The 2+2 dialogue is the highest-level institutional mechanism between India and USA that brings together our perspectives on foreign policy, defence and strategic issues," Indian Ambassador to the U.S. Harsh Vardhan Shringla told news agency PTI in Washington. In addition, officials say U.S. concerns over the Citizenship Amendment Act and the protests, which the U.S. state department has spoken about twice now, will come up. "We are closely following developments regarding the Citizenship Amendment Act. We urge authorities to protect and respect the right of peaceful assembly. We also urge protesters to refrain from violence," a U.S. State Department spokesperson said in Washington. U.S. officials in Delhi have also raised continuing restrictions in Kashmir, including the detention of political leaders as recently as last week, and have made regular requests repeatedly for the government to allow U.S. Embassy diplomats to visit Jammu and Kashmir.

Nation

A growing blot on the criminal justice system (Faizan Mustafa - Vice-Chancellor, NALSAR University of Law, Hyderabad)

- The deaths, in an encounter last Friday, of the four accused in the rape and murder of a young veterinarian in Hyderabad (it happened on Wednesday) has revived the debate on the "right to kill", or "extra-judicial killings" or "fake encounters", which is the ugly reality of our country. Earlier, these encounters used to be criticised by the public and media. But in the new and "resurgent" India, we have started celebrating this instant and brutal form of justice. Blood lust has become the norm in preference to due process and constitutional norms. For example, there were many in Hyderabad who were seen

showering flower petals on the police officers involved in Friday's encounter. Even the father of the Unnao rape victim has demanded "Hyderabad-like justice". Is India moving from rule of law to rule by gun? We have reason to be concerned about delays in rape trials. But a Hyderabad-like solution is absolutely out of the question. The new Chief Justice of India has rightly ruled out the instant justice model in a speech recently. The right thing to do in rape cases is to appoint senior judges in fast track courts; no adjournments should be permitted, and rape courts should be put under the direct control of High Courts; the district judge should not have any power to interfere, and the trial must be completed within three months. The only consolation is that India is not the only country that uses encounters. A UN working group on "Enforced or Involuntary Disappearances" has noted, with anguish, that guilty officials are generally not punished. India is also bound by Resolution 1989/65 of May 24, 1989 which had recommended that the principles on the "Effective Prevention and Investigation of Extra Legal. Arbitrary and Summary Executions" annexed to the Resolution be honoured by all governments. The UN General Assembly subsequently approved the principles. It resolved that the principles, "shall be taken into account and respected by governments within the framework of their national legislation and practices, and shall be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the government and the public in general". We have not done much in disseminating these guidelines and norms among our police and security forces.

Trigger-happy police?

In the absence of a proper knowledge of international norms, police in India continue to protest against human rights standards in dealing with criminals. Some years ago, in Extra Judicial Execution Victim Families Association — the Supreme Court of India was dealing with more than 1,500 cases of such killings in Manipur, Justice Madan B. Lokur said: "Scrutiny by the courts in such cases leads to complaints by the state of its having to fight militants, insurgents and terrorists with one hand tied behind its back. This is not a valid criticism since and

this is important, in such cases it is not the encounter or the operation that is under scrutiny but the smoking gun that is under scrutiny. There is a qualitative difference between use of force in an operation and use of such deadly force that is akin to using a sledgehammer to kill a fly; one is an act of self-defence while the other is an act of retaliation." The "Hyderabad encounter" does not look like an act of self-defence. It defies common sense and stretches credulity that the police would take accused to the scene of crime at 5.30 a.m. The sun rises a little after 6 a.m. The confession of rape by them to the police is irrelevant under Section 25 in the Indian Evidence Act, 1872. Moreover, our law does permit retraction of confessions by the accused. The UN Human Rights Committee, in many reports, has said that "encounters are murders". Encounter killings are probably the greatest violation of the most precious of all fundamental rights — the right to live with human dignity. Many a time these killings are fake and are so orchestrated that it is difficult to conclusively prove them wrong. These killings always take place with the prior consent of the highest authority, be it either administrative or ministerial. Encounters have indeed become the common phenomenon of our criminal justice system and there are police officers who covet the title "encounter specialists". Our legal system does not permit police officers to kill an accused merely because he is a dreaded criminal, rapist or terrorist. Undoubtedly, the police have to arrest the accused and make them face trial. The Supreme Court has repeatedly admonished trigger-happy police personnel who liquidate criminals and project the incident as an encounter. The court observed in Om Prakash & Ors vs State Of Jharkhand & Anr on September 26, 2012 : "Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to state terrorism."

The Punjab 'model'

During the Punjab insurgency in the 1980s, a large number of suspected militants were eliminated through the encounter killings. The DGP of the State, the late K.P.S. Gill, even got the Governor of the State transferred on questioning the police. Gill contemptuously termed those who tried to get justice in encounter matters as "litigation guns".

The police tried its best to silence those who wanted due process such as Jaswant Singh Kalra, an activist, who used government crematoria records of just one Punjab district to show that at least 6,000 people were secretly cremated by the police. The Government of India itself admitted that as many as 2,097 people had been secretly cremated in Amritsar alone; in spite of the intervention of the National Human Rights Commission (NHRC) and the Supreme Court, just 30 cases were registered by the Central Bureau of Investigation. Punjab's response to terrorism was appreciated all over as a model to be followed by other States. Similarly, in Kashmir about 8,000 people who were apparently in police custody were eliminated in a similar manner though the government contests this figure and says some may have even crossed the border. Even after the so-called end of insurgency, encounters have not come to an end. In 2000 for the massacre of 36 Sikhs in Chittisinghpura, five suspected militants were killed in an encounter. Subsequent forensic tests showed them to be innocent local villagers. NHRC data show that of the almost 2,500 killings in 1993, half turned out to be fake; there were at least 440 cases of encounters between 2002 to 2008. From 2009 to 2013, another 550 cases in different States were documented.

In Andhra Pradesh

Andhra Pradesh too has been notorious as far as encounter killings are concerned. In February 2009, in its judgment on a writ petition filed by the Andhra Pradesh Civil Liberties Committee in the context of 1,800 encounter deaths (1997-2007), the Andhra Pradesh High Court (of united Andhra Pradesh) recognised that encounter deaths are, prima facie, cases of culpable homicide. Thus in all cases of encounter deaths a first information report must be registered, and an independent and impartial investigation ensured. The state's plea of self-defence has to be established at the stage of trial, and not during the stage of investigation. The Supreme Court gave an ex parte stay on the judgment. The High Court in Hyderabad has shown its displeasure over this killing and will hear the matter on Thursday. It has ordered that the bodies of the Hyderabad encounter be preserved till it hears the matter. One hopes the top court of the land will now find the time to

finally hear this important matter and uphold this progressive High Court judgment.

Demonising the legal system won't help (Rukmini S - Chennai-based data journalist)

- The killing of the four men accused of the rape and murder of the Hyderabad veterinarian will need to be properly investigated, though the Telangana police's conduct thus far does not inspire confidence. Ever since the police first turned away the victim's family when they went to lodge a complaint, they demonstrated no commitment to the rule of law. Finally, they claimed that the accused, who were under heavy police protection, tried to escape and had to be killed. The atmosphere of lawlessness that was built up prior to the shooting certainly did not help. From protesters on the ground, to the commentary on social media, to MPs in Parliament, the demand for the instant killing of the accused from all corners created the public opinion for the abandonment of the rule of law that appears to have led to the incident. The argument made by people is that the rule of law is not giving women justice, and that at the very least, laws need to be amended to create a stronger deterrent and provide quicker closure to victims of crimes of sexual violence.

  Flawed arguments

  Both arguments are flawed and need to be challenged or, once again, hard cases will lead to bad law. The chargesheeting rates in cases of rape as well as rape and murder are higher than that for all other violent crimes, and the conviction rates are higher too, while the pendency rates are roughly the same as the average for all violent crimes. The court pendency rate for crimes against Scheduled Castes (SCs), on the other hand, is far higher, but you will not see mass public support for killing those accused of atrocities, including caste-motivated rape against Dalits. Even among those rare few who have professed some belief in the rule of law in the last week, the argument has been that "laws need to get tougher". The hard truth, after an examination of legal reform recommendations and available judicial data, is this — there is no new law needed; in fact, some of the existing

legal provisions are too harsh in ways that harm both men and women, and other important legal provisions are not being implemented. The most comprehensive review of the gaps in laws around sexual harassment and sexual violence came in the aftermath of the 2012 Delhi rape incident in the form of the Justice Verma Committee Report and its recommendations. (It is worth noting that the report's recommendations began by acknowledging that existing laws were adequate, but some improvements could be made.) The report's key recommendations were centred at improving the status of women in non-legal ways as well, but its legal recommendations included a much-needed broadening of the definition of rape. The report also recommended raising the minimum sentence for rape to 10 years.

Strengthening the law

The 2013 Criminal Law (Amendment) Act, which sought to operationalise some of these suggestions, went well beyond what was recommended by the Verma Committee Report. It introduced the death penalty for some circumstances around rape, including repeat offences, despite the Verma Committee expressly arguing against this. Subsequent laws have raised mandatory minimum sentences and simultaneously raised the age of consent. These changes have had a few worrisome results. One, there has been further criminalisation (with longer sentences) of consenting underage couples, which my investigation for The Hindu in 2014 in Delhi found was very common. Two, laws have removed any discretion in minimum sentencing from the hands of judges. There is evidence from other fields of law that removing such discretion actually lowers the rate of conviction. Two of the largest categories of rape cases I found pertained to consenting couples criminalised by the woman's family (over 40% of the cases in Delhi) and 'breach of promise to marry' (over 25%). Further, conviction in cases other than those involving these two categories was over 75%. What we have now is a situation where there are not any remaining loopholes in laws concerning sexual violence against women; on the other hand, there is no legal protection for adult men from rape, and under the new Transgender Persons (Protection of Rights) Act, the sexual abuse of a transgender person carries a maximum sentence of

two years only. Official statistics on the speed of trials by nature of crime are not maintained; however, there is anecdotal evidence among practising lawyers that the average rape trial in a big city at the trial court stage is now completed within two years, but the appellate process takes longer. In the 2012 Delhi case, the trial was conducted within a year, the High Court appeal by March 2014, and the Supreme Court appeal by May 2017. Subsequently, the appeals of the convicts against their sentence — the death penalty — were heard and rejected.

When the accused is powerful

There remain instances, particularly when the accused is a powerful person, where the process of exhausting the individual's pre-trial options, including attempts to quash charges or shift the trial to a friendlier city, makes a mockery of a fast-track case; the trial of former Tehelka editor Tarun Tejpal, accused of sexually assaulting an employee, only resumed in October 2019 as Tejpal went up to the Supreme Court seeking quashing of the charges filed in 2013. The argument here is not that the accused should not receive the full range of pre-trial legal options guaranteed by law, but that they be heard at a pace that maintains the spirit of providing speedy justice to the complainants. Other improvements in existing laws remain essential — the police are still able to ask worried parents to return home without filing an FIR (already a punishable act for the police); victims still face cross-examination about their past sexual histories; and there is still little by way of rehabilitation or even therapy offered to victims. Legal arguments are easy to make from a distance — when one is not suffering the agony of a family that has had to imagine the final, helpless hours of a loved one. There is no doubt that the anguish or the "outrage" of people in the aftermath of such horrific crimes is justified and, for the most part, well-intentioned. However, hard cases have already made bad law in India, and we continue to flail in helplessness for more laws. The tragedy is there is no band-aid left. Instead, by abandoning principles of justice to calm the rage, we are making the country more savage and less safe for women.

- After the December 2012 incident, in response to the widespread demand for a more stringent law and fast track courts, the law on rape

was amended substantially based on the recommendations and deliberations of the Justice J.S. Verma Committee. The Criminal Law (Amendment) Act, 2013, or Nirbhaya Act, 2013, as it is christened, is testimony to the possibility of translating public angst into just law. That is a victory for the movement against rape that Nirbhaya's family must celebrate as their own.

A note for the Indian police

There is a procedure prescribed by the law for criminal investigation. This is a procedure embedded in constitutional principles and honed over decades of thinking on keeping constitutionalism alive and throbbing through the most testing times. Article 21 of the Constitution of India — "No person shall be deprived of his life or personal liberty except according to procedure established by law" — is fundamental and non-derogable. The police, as officers of government, are bound by the Constitution — there are no exceptions. The police personnel — unnamed, except for a Commissioner of Police — have caused the investigation of the crime of rape and murder to abate by killing the suspects. Before we examine the problems in this action, let us refresh our memory of a core constitutional precept as set out in the Salwa Judum case in 2011: "Modern constitutionalism posits that no wielder of power should be allowed to claim the right to perpetrate state's violence against anyone, much less its own citizens, unchecked by law, and notions of innate human dignity of every individual." This is the touchstone of the constitutionally prescribed rule of law, which police officers are schooled in as part of their foundational training. The Supreme Court of India, by resurrecting Justice H.R. Khanna's dissent in Puttaswamy in 2017, has prescribed the interpretation of Article 21: It is non-negotiable, non-derogable, and is not suspended even during conditions of Emergency. We are not living under declaration of Emergency so the duty of care is more onerous on the police. Any argument on the actions being carried out in 'purported discharge of official duties' especially involving the death of unarmed persons in custody cannot stand the narrowest test of Article 21. There is no law in force in India that authorises the police to kill. The plea of self-defence cannot be used to rationalise a targeted, pre-meditated killing

of suspects in custody. This plea is bound to the apprehension of death at the hands of the suspects at the time that the suspects are shot. There is nothing to suggest that the four suspects posed a threat to the lives of the police personnel since they were admittedly in custody and, therefore, presumably unarmed. The police have confessions of the suspects while in custody, the evidentiary value of which must be evaluated by the court; but we have on the other hand an open declaration by the police of shooting and causing death. As was argued in the Encounters case before the Andhra Pradesh High Court, the discussion on the law 'was never whether there should be indictment and trial when homicide is committed in self-defense'. The debate was on 'whether a plea of self-defense where excessive force is used, should be tried for manslaughter or murder'. We have deliberated on this at length in the High Court of Andhra Pradesh and the full bench decision on encounters can scarcely be forgotten especially because these are unarmed commoners in custody.

A part of democracy

Where does that leave us? The case of the rape and murder of the veterinarian abates with the killing of all four suspects. This without giving a chance for the law to operate. However, we now have a fresh case of the murder of four unarmed suspects in custody that must be investigated with police personnel required to stand trial. The pathways of justice are not linear nor without obstacles. But we have, as a people, chosen the route of democracy and the Constitution, so we really have no option but to school ourselves in constitutional morality. For as Dr. B.R. Ambedkar cautioned in anticipation, constitutional morality must replace public morality. It is not easy, because it is not a natural sentiment. But it is non-negotiable.

SC forms panel to probe Hyderabad encounter

- The Supreme Court set up an inquiry commission led by its former judge, Justice V.S. Sirpurkar, to probe the circumstances of the police 'encounter' killing of four persons accused in the gang-rape and murder of a veterinarian in Hyderabad. in December. A Bench, led by Chief Justice of India Sharad A. Bobde, asked the inquiry commission, which

includes former Bombay High Court judge, Justice Rekha Baldota, and the former CBI Director, D.R. Karthikeyan, to complete its investigation in six months. Advocate K. Parameshwar was appointed the counsel for the Inquiry Commission. The commission will sit in Hyderabad. The apex court has, meanwhile, stayed the proceedings in the Telangana High Court and the National Human Rights Commission into the incident. The Bench gave the Inquiry Commission six months to complete the probe.

Quick, not hasty

- The trial court verdict finding former BJP legislator Kuldeep Singh Sengar guilty of raping a minor girl from Unnao in Uttar Pradesh underscores the merits of a justice system that managed to overcome initial apathy and take the investigation to its logical end. The Supreme Court transferred the Unnao cases involving Sengar and his associates from Lucknow to Delhi on August 1 and set a 45-day deadline for completing the trial. That the judgment is out before the end of the year, with the sessions court recording a conviction for rape under the IPC and penetrative sexual assault on a minor under the Protection of Children from Sexual Offences Act, shows a welcome sense of urgency. The sentencing, a few days on, holds out hope that the guilty politician may have to serve a minimum of 10 years or life imprisonment. Judge Dharmesh Sharma's judgment has struck a blow for a system about which there is much cynicism over justice-denying delays. The history of this case also reveals the difficult path to justice that survivors of sexual offences have to tread. It highlights a principal systemic problem: how the unequal power relations between perpetrator and victim will almost succeed in silencing the survivor, but for the intervention of superior courts. Threatened into silence for two months, the survivor and her family ultimately reported the crime, only to face fierce retribution. She drew attention to her plight by threatening to set herself ablaze outside U.P. Chief Minister Yogi Adityanath's residence in April 2018. Her father, arrested in a case under the Arms Act, died mysteriously in judicial custody. The girl also revealed that a week after the MLA's crime, his associates once again abducted and

raped her. It was only after the Supreme Court transferred the investigation to the CBI, and later the trial to Delhi, that justice was seen to be done. The court also pulled up the CBI for delaying the charge-sheet in the second case and not adhering to victim-friendly norms during the probe. A key lesson is that justice is not necessarily about giving the death penalty for rape through rapid-fire trials. It should mean that perpetrators should fear the certainty of punishment, and live with the taint of guilt for long years in prison. This is a point that knee-jerk law-making, of the sort that Andhra Pradesh has done, and the public clamour for executing all rape suspects, of the sort seen after the rape and murder of a veterinarian near Hyderabad, seem to miss. The essential framework of justice in rape cases should consist in a quick, but not hasty, probe by investigators and prosecutors sensitised to the travails of survivors, especially children, and a conducive atmosphere for them to depose during trial. The resulting lengthy jail terms will constitute both just deserts for grave crimes and an opportunity for remorse.

The laws on rape and sexual crimes

- After the rape and murder of a veterinarian in Hyderabad on November 28 and the burning of a rape survivor in Unnao, Uttar Pradesh, on December 5, there has been an outcry for justice for the victims. Within and outside Parliament there has been a clamour to make the criminal justice system tougher on an offender committing sexual crimes against women and children.

  What has been the system in place?

  'Rape' as a clearly defined offence was first introduced in the Indian Penal Code in 1860. Prior to this, there were often diverse and conflicting laws prevailing across India. The codification of Indian laws began with the enactment of the Charter Act, 1833 by the British Parliament which led to the establishment of the first Law Commission under the chairmanship of Lord Macaulay. The Law Commissioners decided to put the criminal law of the land in two separate codes. The first to be placed on the statute book was the *Indian Penal Code* formulating the substantive law of crimes. This was enacted in October

1860 but brought into force 15 months later on January 1, 1862. The first *Code of Criminal Procedure was enacted in 1861*, which consolidated the law relating to the set-up of criminal courts and the procedure to be followed in the investigation and trial of the offence.

What did the IPC say?

Section 375 of the IPC made punishable the act of sex by a man with a woman if it was done against her will or without her consent. The definition of rape also included sex when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. Also, sex with or without her consent, when she is under 18 years is considered rape. However, under the exception, sexual intercourse or sexual acts by a man with his wife, the wife not being under 15 years of age, is not rape. Section 376 provided for seven years of jail term to life imprisonment to whoever commits the offence of rape.

What happened in 1972?

For over a century after 1860, the criminal law relating to rape and sexual assault cases remained unchanged until the watershed incident of the Mathura custodial rape case. On March 26, 1972 a young Adivasi girl named Mathura was allegedly raped by policemen in the Desai Gunj Police Station in Maharashtra. In the trial that ensued, the sessions court came to the conclusion that she had sexual intercourse while at the police station but rape had not been proved and that she was habituated to intercourse. While the sessions court acquitted both the policemen, the High Court reversed the order of acquittal. When the case reached the Supreme Court, it overturned the High Court verdict saying that “the intercourse in question is not proved to amount rape”. The top court, in its September 15, 1978 verdict, said no marks of injury were found on the girl after the incident and “their absence goes a long way to indicate that the alleged intercourse was a peaceful affair”.

Why was the Criminal Law Act amended?

The controversial verdict sparked widescale protests across the country seeking a change in existing rape laws. This culminated into the Criminal Law (Second Amendment) Act of 1983. A new Section 114A in the Indian Evidence Act of 1872 was inserted which presumed that

there is absence of consent in certain prosecutions of rape if the victim says so. This applied to custodial rape cases. In the IPC, Section 228A was added which makes it punishable to disclose the identity of the victim of certain offences including rape.

Are the laws gender neutral?

Following the direction of the Supreme Court in a public interest litigation (PIL) initiated by a non-governmental organisation to widen the definition of sexual intercourse in Section 375 of the IPC, the Law Commission in its 172nd report recommended widening the scope of rape law to make it gender neutral. While the rape law in India even today remains gender specific, as the perpetrator of the offence can only be a 'man', the 172nd report led to the amendments in the Indian Evidence Act in 2002. A new provision was inserted which barred putting questions in the cross-examination of the victim as to her general 'immoral character' in rape or attempt to rape cases.

Are rape laws stricter now?

The nationwide public outcry, in 2012, following the December 16 gang rape and murder in Delhi, led to the passing of the Criminal Law (Amendment) Act in 2013 which widened the definition of rape and made punishment more stringent. Parliament made the amendments on the recommendation of the Justice J.S. Verma Committee, which was constituted to re-look the criminal laws in the country and recommend changes. The 2013 Act, which came into effect on April 2, 2013, increased jail terms in most sexual assault cases and also provided for the death penalty in rape cases that cause death of the victim or leaves her in a vegetative state. It also created new offences, such as use of criminal force on a woman with intent to disrobe, voyeurism and stalking. The punishment for gang rape was increased to 20 years to life imprisonment from the earlier 10 years to life imprisonment. Earlier, there was no specific provision in law for offences such as use of unwelcome physical contact, words or gestures, demand or request for sexual favours, showing pornography against the will of a woman or making sexual remarks. But, the 2013 Act clearly defined these offences and allocated punishment. Similarly,

stalking was made punishable with up to three years in jail. The offence of acid attack was increased to 10 years of imprisonment.

What about offences against minors?

In January 2018, an eight-year-old girl in Rasana village near Kathua in Jammu and Kashmir was abducted, raped and murdered by a group of men. The news of the shocking act led to nationwide protests and calls for harsher punishment. This led to the passing of the Criminal Law (Amendment) Act, 2018 which for the first time put death penalty as a possible punishment for rape of a girl under 12 years; the minimum punishment is 20 years in jail. Another new section was also inserted in the IPC to specifically deal with rape on a girl below 16 years. The provision made the offence punishable with minimum imprisonment of 20 years which may extend to imprisonment for life. The minimum jail term for rape, which has remained unchanged since the introduction of the IPC in 1860, was increased from seven to 10 years.

Citizenship Amendment Act

- In a recent interview to the news agency PTI, responding to the criticism coming from members of various political parties, National General Secretary of the Bharatiya Janata Party, Ram Madhav, claimed that the Citizenship (Amendment) Bill of 2019 was similar to a 1950 law enacted by the Jawaharlal Nehru government to expel illegal immigrants from Assam, but which was not applicable to minorities from East Pakistan. Mr. Madhav said, "Let me remind the critics of the Citizenship Amendment Bill, the Nehru government had passed a similar Bill in 1950 for expulsion of illegal immigrants mainly from erstwhile Pakistan (Bangladesh) and had categorically said that minorities of East Pakistan wouldn't be covered under the bill."

  No explicit mention of religion

  Is the statement accurate? A review of the old legislation and reports relating to its passage in Parliament in The Hindu shows that the Bill did not explicitly mention the religion of either those to be expelled or those exempted from it. Rather, it was applicable to all "undesirable" foreigners, while protecting refugees and those fleeing because of fear and violence in East Pakistan. The reference is to the Immigrants

(Expulsion from Assam) Act which provided for the expulsion of certain immigrants who had come to Assam and lived in different parts of India. The Central government viewed their stay as being “detrimental to the interests of the general public of India or of any section thereof or of any Scheduled Tribe in Assam”. The Act replaced an Ordinance promulgated by the Central Government on January 7, 1950, and was passed after discussion in Parliament a month later. During the discussions on the Bill, N. Gopalaswami Ayyangar, who introduced it, was reported in The Hindu to have said that this “Bill was not intended to be applied for refugees from East Bengal and in view of the strong feeling of the House, he was prepared to make it clear in the Bill itself”. There were demands by some members, especially from Punjab and West Bengal, States that had suffered the most from Partition, to explicitly exclude “Hindu refugees” from the purview of this Bill. A day later, a proviso, Section 2(b), was introduced in the Bill to address these and other concerns but not on the lines of what was demanded by some members. Section 2(b) mentions that the Act would not apply to “any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from or left his place of residence in any such area and who has been subsequently residing in Assam”. The Act, therefore, explicitly mentioned that any person who has fled Pakistan on account of “civil disturbances or the fear of such disturbances” would be exempt, ruling out its application to refugees from the then East Pakistan and who fled the neighbouring country.

‘Secular character not violated’

The Bill was passed in Parliament on February 13, 1950. Interestingly, Tajamul Hussain, a Member from Bihar, was quoted in The Hindu as saying during the deliberations that the Bill allows for illegal immigrants to be expelled not because they were Muslims, but because they were not citizens of the country and therefore “the Bill did not violate the secular character of the State”.

- The United States Commission on International Religious Freedom (USCIRF) said it was “deeply troubled” by the passage of the Citizenship (Amendment) Bill in Lok Sabha, “given the religion criterion in the Bill”,

and recommended that "if the CAB passes in both Houses of Parliament, the US government should consider sanctions against the Home Minister and other principal leadership".

Who are the USCIRF?

The USCIRF is an advisory or a consultative body, which advises the US Congress and the administration on issues pertaining to international religious freedom. On its website, the USCIRF describes itself as an independent, bipartisan US federal government commission that was created by The International Religious Freedom Act (IRFA). "The broad-based coalition that advocated strongly for IRFA's enactment sought to elevate the fundamental human right of religious freedom as a central component of US foreign policy," the website says. In practice, the USCIRF has little teeth in implementation, but acts as a conscience-keeper for the two branches in the US government — the legislature and the executive. It often takes maximalist or extreme positions, and has been used by civil society groups to put pressure on US Congress members and administration officials.

And what is the IRFA?

The International Religious Freedom Act of 1998 was passed by the 105th US Congress (1997-99) and signed into law by then President Bill Clinton on October 27, 1998. It is a statement of the US's concern over violations of religious freedoms overseas. The full title of the Act reads: "An act to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted in foreign countries on account of religion; to authorize United States actions in response to violations of religious freedom in foreign countries; to establish an Ambassador at Large for International Religious Freedom within the Department of State, a Commission on International Religious Freedom, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes."

What does the USCIRF do?

The USCIRF is mandated by US statute to "monitor the universal right to freedom of religion or belief abroad — not in the United States — using international standards to do so and makes policy

recommendations to the President, Secretary of State, and Congress". "USCIRF Commissioners are appointed by the President and Congressional leaders of both political parties. While USCIRF is separate from the State Department, the Department's Ambassador-at-Large for International Religious Freedom is a non-voting ex officio Commissioner. A professional, non-partisan staff supports USCIRF's work," according to the commission's website.

The USCIRF's main responsibilities are:

#To issue an annual report by May 1 of each year, assessing the US government's implementation of IRFA. It recommends countries that the Secretary of State should designate as "Countries of Particular Concern" for engaging in or tolerating "systematic, ongoing, egregious violations of religious freedom"; documents conditions in about 30 countries; reports on significant trends; and makes recommendations for US policy.

#To engage Congress by working with Congressional offices, advising on legislation, testifying at hearings, and holding briefings on religious freedom issues.

#To meet regularly with Executive Branch officials, including the Departments of State and Homeland Security, to share information, highlight situations of concern, and discuss USCIRF's recommendations for US policy.

How does USCIRF define "freedom of religion or belief abroad"?

On its website, the Commission says: "Religious freedom is an important human right recognized in international law and treaties... The freedom of religion or belief is an expansive right that includes the freedoms of thought and conscience, and is intertwined with the freedoms of expression, association, and assembly. The promotion of this freedom is a necessary component of US foreign policy." In its statement issued to "raise serious concerns and eye sanctions recommendations" in the aftermath of the passage of the CAB in Lok Sabha, the USCIRF said the Bill "enshrines a pathway to citizenship for immigrants that specifically excludes Muslims, setting a legal criterion for citizenship based on religion". The CAB, it said, "is a dangerous turn in the wrong direction; it runs counter to India's rich history of secular

pluralism and the Indian Constitution, which guarantees equality before the law regardless of faith. In conjunction with the ongoing National Register of Citizens (NRC) process in Assam and nationwide NRC that the Home Minister seeks to propose, USCIRF fears that the Indian government is creating a religious test for Indian citizenship that would strip citizenship from millions of Muslims".

Has USCIRF raised issues relating to India in the past?

In August this year, USCIRF had issued a statement against the NRC in Assam and said that it creates a "negative and potentially dangerous climate for the Muslim community" in north-eastern India. It had said that the updated NRC could be used to disenfranchise Muslims in the region and is part of the government's ongoing efforts to introduce a "religious test" specifically aimed at clearing out Muslims. In June this year, in response to mob lynching of Tabrez Ansari in Jharkhand in India, USCIRF Chair Tony Perkins had condemned the incident. In July 2008, it had urged the US State Department to deny a tourist visa to then Gujarat Chief Minister Narendra Modi, who had been invited to attend a conference in New Jersey. It had said that "Modi was previously denied entrance to the United States due to his role in riots that overtook the Indian state of Gujarat from February to May 2002 in which reportedly as many as 2,000 Muslims were killed, thousands raped, and over 200,000 displaced. Numerous reports, including reports of official bodies of the Government of India, have documented the role of Modi's state government in the planning and execution of the violence, and the failure to hold perpetrators accountable".

- During the course of the debate on the Citizenship (Amendment) Bill, 2019, Home Minister Amit Shah said, "If the Congress had not divided this country on the basis of religion, there would be no need to bring in this bill. It was the Congress that divided the country on religious lines, not us." It is important to note that Mr. Shah's comments are misleading; the truth is far more complicated. The events leading up to Partition involved a bewildering array of historical characters and motives, often at variance with one another. Mr. Shah also overlooks the body of evidence that suggests that it is difficult to influence the course of history if various groups are united comprehensively for or

against an idea. The idea of religious identity being the basis for Partition has less to do with the Congress and more to do with the ardent advocates of a communal notion of nation-building — V.D. Savarkar of the Hindu Mahasabha and Muhammad Ali Jinnah of the Muslim League. The Muslim League had a firm grasp on the political value of such an idea. Jinnah outmanoeuvred political opponents on his way towards establishing Pakistan.

An idea that grew

By 1940, the germ of the idea, propounded initially in 1923 by Savarkar, had seized Jinnah's imagination and was fuelled by events on the ground. From the beginning, both M.K. Gandhi and Jawaharlal Nehru rejected the idea. When World War 2 broke out towards the end of 1939, Lord Linlithgow, the then Viceroy of India, did not receive the kind of support that he wanted from the Congress for war efforts, even though there were substantial differences of opinion on the way forward between Nehru and Gandhi. The Congress promised help, but with heavy caveats, including independence at the end of the war. On the other hand, Jinnah was far more canny, less conditional, and more tactical in extending his support. As the Congress increased pressure on the British, Jinnah, with the backing of Bengal, Punjab and Sindh, increased Linlithgow's political interaction with and dependence on the Muslim League. Eventually, Jinnah (and the Hindu Mahasabha) did not support the Quit India Movement. British Prime Minister Winston Churchill, predisposed to managing situations through divisions, saw innate merit in supporting Jinnah rather than giving into the Congress's demands. Soon after Jinnah articulated the idea of Pakistan in the Lahore Resolution of 1940, the British endorsed the essence of it, thereby pushing the idea further into the realm of reality.

Failure of the Congress

It is also a fact that the Congress failed in persuading either Jinnah to give up his separatist dream or in convincing the British to not help Jinnah take that path. The Quit India Movement also contributed to the steady drift between the goals of the Congress and those of the British. In 1942, the Congress rejected the recommendations of the Stafford Cripps mission that endorsed the idea of Partition. Even before

Partition, the failure of talks between Jinnah and the Congress had a fallout on the ground, helped by a parallel rise of extremist views and forces on both sides of the political spectrum. Till as late as 1946, the Congress remained opposed to the idea of nations being carved on the basis of religious identities. The various rifts came to the surface in the riots in West Bengal after a political fallout between Nehru and Jinnah. Jinnah called for "direct action" to realise the idea of Pakistan. Thousands died as the riots began in August 1946. Trouble began to spread to Noakhali in West Bengal and Bihar. This was probably the turning point when Congress leaders saw no further point fighting the idea that Jinnah had presented, the idea that the British had assiduously foisted and aggressively worked towards. The short answer to Mr. Shah's postulation is it was not Congress that caused the division along religious lines. It was the last to reluctantly go along, for want of a better alternative, all things considered.

- In the revised version of CAB, the Centre has exempted certain areas in the Northeast, where the Bill has been facing protests. In effect, it exempts the whole of Arunachal Pradesh, Nagaland and Mizoram, almost the whole of Meghalaya, and parts of Assam and Tripura, but keeps all of Manipur under its ambit. (To address Manipur's concerns, the government is expected to announce special provisions).

Why are three states totally exempted?

The Citizenship (Amendment) Bill (CAB) states: "Nothing in this section shall apply to tribal areas of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under 'The Inter Line' notified under the Bengal Eastern Frontier Regulation, 1873." The Inner Line Permit (ILP) system prevails in Arunachal Pradesh, Nagaland and Mizoram. In Nagaland, Dimapur town is not under ILP as of now.

How does the ILP system work?

ILP is a special permit that citizens from other parts of India require to enter the three states. It can be obtained after applying online or physically, and specifies dates of travel and areas which the ILP holder can travel to. When the regime was introduced under the Bengal Eastern Frontier Regulation Act of 1873, the objective was to protect

the Crown's own commercial interests by preventing "British subjects" (Indians) from trading within these regions. In 1950, the Indian government replaced "British subjects" with "Citizen of India", to address local concerns about protecting their interests.

What does this exemption mean for beneficiaries under CAB?

In ILP states, there are already a large number of migrants from other Indian states. They live and work there equipped with long-term ILPs, and renew these. The question now being asked, therefore, is whether a person who becomes an Indian citizen through CAB can, or cannot, apply for an ILP and work in such states, just like any other Indian citizen. Also, multiple restrictions and regulations exist on entry and stay of "outsiders" (Indian citizens from outside that state/area) in areas under the Inner Line system or the Sixth Schedule. These existing rules are expected to put the same restrictions on someone who has acquired citizenship through CAB. The exemptions appears to imply, however, that no immigrant non-citizen living in these areas can be regularised as an Indian citizen through CAB. "The exemption means that no... Bangladeshi will be allowed to settle in Mizoram and other ILP states under CAB. That is what our demand was — that even if CAB is passed, a state like Mizoram should be exempted," said Vanlaruata, president of the central committee of the influential Young Mizo Association.

What is the Sixth Schedule, and which areas are exempted from CAB?

The Sixth Schedule of the Constitution, described in Articles 244(2) and 275(1), relates to special provisions in administration of Assam, Meghalaya, Tripura and Mizoram and provides special powers for Autonomous District Councils (ADCs) in these states. ADCs have powers to enact laws in areas under their jurisdiction on a variety of subjects, with the objective of ensuring development of tribal areas and boosting self-governance by tribal communities. Mizoram is covered under the ILP regime in any case. Among the other three states that have areas protected under the Sixth Schedule, tribal-majority Meghalaya has three ADCs that cover practically the entire state,

except for a small part of Shillong city. Assam has three ADCs and Tripura one, all with Sixth Schedule powers.

So, why has Manipur been an exception to both these kinds of regimes?

Manipur, like Tripura, was a princely state. When they joined the Indian Union (both in 1949; they became full-fledged states in 1972), they were out of the scheme of the Sixth Schedule, said L Lam Khan Piang, assistant professor at the School of Social Sciences in JNU. "Only from 1985, the Sixth Schedule was implemented in Tripura's tribal areas. When Tripura was given, the Centre had said that even in Manipur it would be extended shortly —but it never turned out to be a reality. However, in Manipur the state government had recommended three times for the Sixth Schedule... they recommended three times but they did not pursue it properly," Piang said.

What about Manipur's tribal areas?

Manipur has two geographically distinct areas. The valley, which includes Imphal, constitutes roughly 10% of the geographical area but holds around 60% of the state's population. These belong mostly to the dominant Meitei community. The remaining 90% is hill areas, home to the other 40% that include a wide range of tribes, including Nagas and Kukis. Piang said the Centre, while granting statehood, was aware that certain problems could come up for tribals and hence introduced Article 371C.

But what is Article 371C?

It mentions special provisions for Manipur: "... The President may, by order made with respect to the State of Manipur, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the Hill Areas of that State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of such committee." It adds, "The Governor shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Hill Areas in the State of Manipur and the

executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas." Piang said powers granted through this provision protect the tribals of Manipur in the Assembly, primarily through the Hill Areas Committee of the Manipur State Legislative Assembly — which comprises MLAs from the hill areas of the state.

Are there any other provisions for Manipur?

The Manipur (Hill Areas) District Council Act, 1971, passed by Parliament, paved the way for establishment of six Autonomous District Councils in Manipur in 1972. Piang notes, however, that without the Sixth Schedule in place, these Councils have much lower powers in comparison to ADCs under the Sixth Schedule. Last year, the Manipur People Bill, 2018 was passed by the Assembly. Said to be awaiting presidential assent, it proposes to several regulations on "outsiders" or "non-Manipuri people" in the state. The Bill had undergone series of negotiations on defining the "Manipuri" people, after which a consensus was reached on 1951 as the cut-off year.

What about other states in the Northeast?

In November this year, the Meghalaya Cabinet approved amendments to the Meghalaya Residents Safety and Security Act 2016, which will lead to laws that require non-resident visitors to register themselves. The move came in the backdrop of demands for an ILP-like regime and concerns expressed by civil society and political leaders, including Chief Minister Conrad Sangma, that people excluded from the National Register of Citizens (NRC) in Assam might try to enter Meghalaya. In Assam too, there have been demands by certain sections for the introduction of an ILP regime. Groups such as the Asom Jatiyatabadi Yuba Chatra Parishad, a youth organisation, have been organising demonstrations seeking ILP throughout the state.

What is the Meghalaya law held up by Gov?

- Nagaland Governor R N Ravi was given additional charge of Meghalaya, whose Governor Tathagata Roy is learnt to have gone on leave. In the days leading up to the move, Roy had tweeted controversially on the Citizenship Amendment Act, and had also upset many in the state by

not giving assent to amendments to The Meghalaya Residents Safety and Security Act, 2016. The amendments had been approved by the Meghalaya Cabinet by an Ordinance.

What is the Ordinance about?

The existing 2016 Act deals with registration and documentation of non-state residents living in Meghalaya. The Ordinance, cleared by the Cabinet in November, seeks to extend similar rules to cover all non-state residents visiting or living in the state, Deputy Chief Minister Prestone Tynsong said last month.

What is the point of the amendment?

It came in the backdrop of the National Register of Citizens (NRC) process in Assam, which led to concerns among civil society and political leaders, including Chief Minister Conrad Sangma, that people excluded from the Assam NRC might try to enter Meghalaya. Besides, political parties and activists in Meghalaya had long been demanding replication of the Inner Line Permit (ILP) regime of Arunachal Pradesh, Nagaland and Mizoram, which has now been extended to Manipur following the passage of the Citizenship Amendment Bill. While the ILP-regime states are exempt from the Citizenship Amendment Act (CAA), practically the whole of Meghalaya is exempt by virtue of special protections under the Sixth Schedule of the Constitution. The Ordinance itself was not a fallout of the citizenship legislation, but a precautionary measure in view of the Assam NRC.

How would the registration take place?

Amid concerns that followed the Ordinance, the Meghalaya government clarified last month that the modalities for registration of visitors have not been finalised. The Director of the Tourism Department issued a statement on November 5: “The registration process will be designed keeping in mind the convenience of tourists who are visiting our state. It will be a simple process with both online and offline registration options and will be similar to the registration when you check into your hotel. There will be no need to stand or wait in queues when you enter the State. We understand that your time and resources are precious. Meghalaya welcomes all domestic and international travellers who wish to explore our landscapes and

experience our culture and traditions. Make your plans and watch our official channels for further updates."

So, Governor Roy had not given assent?

By some accounts, he had refused to sign the amendments. Robertjune Kharjahrin, chairperson of CoMSO, an umbrella organisation of 22 NGOs and civil society organisations in Meghalaya that are opposing the new citizenship law, told recently: "There has been a lot of anger among the people in Meghalaya against the Governor because he has been refusing to sign the Meghalaya Residents Safety and Security Act. This was compounded by his tweet about North Korea."

Anglo-Indian quota: history, MPs

- Parliament passed the Constitution (126th Amendment) Bill, extending reservation for SC/STs but doing away with the provision for nomination of Anglo Indians to Lok Sabha and some state Assemblies.

  Who are Anglo-Indians?

  The Anglo-Indian community in India traces its origins to an official policy of the British East India Company to encourage marriages of its officers with local women. The term Anglo-Indian first appeared in the Government of India Act, 1935. In the present context, Article 366(2) of the Constitution Of India states: "An Anglo-Indian means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only..."

  What is the Anglo-Indian population?

  The number of people who identified themselves as Anglo-Indian was 296, according to the 2011 Census. The All India Anglo-Indian Association, on the other hand, has objected to Law Minister Ravi Shankar Prasad's claim that the community has just 296 members. Its president-in-chief, Barry O'Brien, has written to both the Prime Minister and Prasad. "We accessed the government data which is from 2011 census. It shows nine Anglo-Indians in West Bengal. There are probably more than that in my own family. Also, it shows zero in Uttar Pradesh

and Uttarakhand, yet those Assemblies right now have sitting members from the community. Did the state government then nominate non-Anglo-Indians? How can they? Also, a petition we started already has 750 signatures of Anglo-Indians. The truth is nobody knows how many Anglo-Indians there are in the country. All we know is it's not just a few thousand, neither or it in crores. It's probably somewhere in the lakhs," O'Brien said. Barry O'Brien had briefly joined the BJP some years ago. He is the brother of Trinamool MP Derek O'Brien, and son of Neil O'Brien, a former nominated Lok Sabha MP. During the debate over the Citizenship (Amendment) Bill in Rajya Sabha, Derek O'Brien traced the roots of his Irish grandfather to talk about how it was because of the Constitution of India that the O'Briens of India stayed in the country, while those of Pakistan moved out to Canada, England or Australia.

What numbers did the association cite?

In his letter to Prasad, he wrote: "The number of Anglo-Indians in India today is far greater than that (296) and we have documentary evidence to prove it. I am privileged to head the All India Anglo-Indian Association, the oldest and largest registered body of Anglo-Indians in India...our association currently has 62 branches across 20 states/UTs in the country...we have as many as 6 branches in Chennai alone and each of them has between 300 and 1000 members. Similarly, in branches like Bangalore and Kolkata we have more than 700 members in each of them. We have branches with about 300-400 members in cities like Madurai, Cochin, Tiruchirapalli, Hyderabad-Secunderabad and Vishakhapatnam. In Maharashtra alone, Anglo-Indians belonging to Mumbai, Pune, Nagpur, Bhusawal, Devlali, Nashik and Igatpuri are members of our association while in Uttar Pradesh we have four branches namely Lucknow, Agra, Allahabad and Jhansi." The letter also claims that membership is increasing by "leaps and bounds" in Delhi, Gurgaon, Faridabad, Noida and Ghaziabad. There are also active branches in erstwhile railway colonies like Asansol, Kharagpur and Adra in West Bengal, Khurdah Road in Odisha, Jabalpur and Bilaspur in Madhya Pradesh and Vijayawada in Andhra Pradesh.

Under what provisions was reservation in legislature granted?

Provision for nomination of two Anglo-Indians to Lok Sabha was made under Article 331 of the Constitution. It says: "Notwithstanding anything in Article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the people, nominate not more than two members of that community to the House of the People." The idea of such nominations is traced to Frank Anthony, who headed the All India Anglo-Indian Association. Article 331 was added in the Constitution following his suggestion to Jawaharlal Nehru. *Article 333* deals with representation of the Anglo-Indian community in Legislative Assemblies. It says: "Notwithstanding anything in Article 170, the Governor of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, (nominate one member of that community to the Assembly)." Currently 14 Assemblies have one Anglo-Indian member each: Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Tamil Nadu, Telangana, Uttar Pradesh, Uttarakhand and West Bengal. The 126th Amendment does away with this as well. According to the 10th Schedule of the Constitution, Anglo-Indian members of Lok Sabha and state Assemblies can take the membership of any party within six months of their nomination. But, once they do so, they are bound by their party whip. The Anglo-Indian members enjoy the same powers as others, but they can not vote in the Presidential election because they are nominated by the President.

SC/ST creamy layer exclusion

- The Centre urged the Supreme Court to refer to a larger Bench its decision last year that had applied the creamy layer principle to promotions for Scheduled Castes and Scheduled Tribes in government jobs.

  What was the case about?

  In Jarnail Singh vs Lachhmi Narain Gupta (2018), the court dealt with a batch of appeals relating to two reference orders, first by a two-judge Bench and then by a three-judge Bench, on the correctness of the Supreme Court's judgment in M Nagaraj & Others vs Union of India

(2006). The Nagaraj case, in turn, had arisen out of a challenge to the validity of four Constitution amendments, which the court eventually upheld.

What were these amendments?

77th Amendment: It introduced Clause 4A to the Constitution, empowering the state to make provisions for reservation in matters of promotion to SC/ST employees if the state feels they are not adequately represented.

81st Amendment: It introduced Clause 4B, which says unfilled SC/ST quota of a particular year, when carried forward to the next year, will be treated separately and not clubbed with the regular vacancies of that year to find out whether the total quota has breached the 50% limit set by the Supreme Court.

82nd Amendment: It inserted a proviso at the end of Article 335 to enable the state to make any provision for SC/STs "for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State". Article 335 of the Constitution relates to claims of SCs and STs to services and posts. It reads: "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

85th Amendment: It said reservation in promotion can be applied with consequential seniority for the SC/ST employee.

How did the Nagaraj case proceed?

The petitioners claimed that these amendments were brought to reverse the effect of the decision in the Indra Sawhney case of 1992 (Mandal Commission case), in which the Supreme Court had excluded the creamy layer of OBCs from reservation benefits. In the Nagaraj judgment, a five-judge Bench of then Chief Justice of India Y K Sabharwal and Justices K G Balakrishnan, S H Kapadia, C K Thakker and P K Balasubramanyan upheld the constitutional validity of the amendments. The court said reservation should be applied in a limited

sense, otherwise it will perpetuate casteism in the country. It upheld the constitutional amendments by which Articles 16(4A) and 16(4B) were inserted, saying they flow from Article 16(4) and do not alter the structure of Article 16(4). The SC ruled that "the State is not bound to make reservation for SC/ST in matter of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely". In other words, the court extended the creamy layer principle to SCs and STs too.

What happened in the subsequent Jarnail Singh case?

The Centre argued that the Nagaraj judgment needed to be revisited for two reasons. Firstly, asking states "to collect quantifiable data showing backwardness is contrary to the nine-Judge Bench in Indra Sawhney v Union of India where it was held that Scheduled Castes and Scheduled Tribes are the most backward among backward classes and it is, therefore, presumed that once they are contained in the Presidential List under Articles 341 and 342 of the Constitution of India, there is no question of showing backwardness of the SCs and STs all over again". Secondly, the creamy layer concept has not been applied in the Indra Sawhney case to the Scheduled Castes and the Scheduled Tribes; the Nagaraj judgment, according to the government, "has misread" the Indra Sawhney judgment to apply the concept to the SCs and STs. Attorney General K K Venugopal, appearing for the Centre, contended that "once the Scheduled Castes and the Scheduled Tribes have been set out in the Presidential List, they shall be deemed to be Scheduled Castes and Scheduled Tribes, and the said List cannot be altered by anybody except Parliament under Articles 341 and 342". (These two Articles define who will be considered SCs or STs in any state or Union Territory). The AG also wanted the court to lay down "the

test of proportion of Scheduled Castes and Scheduled Tribes to the population in India at all stages of promotion...”

How did the court rule?

Last year, a five-judge Constitution Bench comprising then Chief Justice of India Dipak Misra and Justices Kurian Joseph, R F Nariman, S K Kaul and Indu Malhotra refused to refer the Nagaraj verdict to a larger bench. However, it held as “invalid” the requirement laid down by the Nagaraj verdict that states should collect quantifiable data on the backwardness of SCs and STs in granting quota in promotions, but said they will have to back it with data to show their inadequate representation in the cadre. It said that the creamy layer principle — of excluding the affluent among these communities from availing the benefit —will apply. “The whole object of reservation is to see that backward classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were,” the Bench said. “This being the case, it is clear that when a Court applies the creamy layer principle to Scheduled Castes and Scheduled Tribes, it does not in any manner tinker with the Presidential List under Articles 341 or 342... It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation,” the Bench ruled. On the prayer that it should lay down the test for determining adequacy of representation in service, the court said “according to us, Nagaraj... has wisely left the test for determining adequacy of representation in promotional posts to the States...”

What happens now?

The Centre, while praying that the 2018 judgment be referred to a larger Bench, has referred once again to the 1992 Indra Sawhney judgment, submitting that the Supreme Court then did not apply the creamy layer concept to SCs and STs. The Bench has said it will hear the matter after two weeks.

What is the creamy layer concept?

The 'means-test and creamy layer' first finds expression in the Supreme Court's landmark judgment in Indra Sawhney versus Union of India, delivered by a nine-judge Bench on November 16, 1992. The judgment recorded lawyers describing the 'creamy layer' as "some members of a backward class who are highly advanced socially as well as economically and educationally... They constitute the forward section of that particular backward class — as forward as any other forward class member. They lap up all the benefits of reservations meant for that class, without allowing benefits to reach the truly backward members of that class". The Indra Sawhney judgment had upheld the government's move, based on the Mandal Commission report, to give 27% reservation to Other Backward Classes. But it held that the creamy layer (socially advanced persons) "can be and must be excluded from backward classes". The court said "economic criterion could be adopted as an indicium or measure of social advancement" in order to identify members of a creamy layer in a class or a group. The court asked the Central government to fix the norms for income, property and status for identifying the creamy layer. In 1993, the creamy layer ceiling was fixed at ₹1 lakh. It was subsequently increased to ₹2.5 lakh in 2004, ₹4.5 lakh in 2008, ₹6 lakh in 2013, and at ₹8 lakh since 2017.

Whither Amaravati?

- Sometimes ideas can sound good, but when it comes to implementation they need to be tested for feasibility and, importantly, timing. Andhra Pradesh Chief Minister Y.S. Jagan Mohan Reddy hinted that the South African model of three capitals was best suited in his State and that his government would work towards this. In South Africa, the administrative capital is in Pretoria, its national legislature in Cape Town and its judicial capital in Bloemfontein. Mr. Reddy's idea seems to stem from the reasoning that a distribution of executive, legislative and judicial governance across Visakhapatnam, Amaravati (the current capital) and Kurnool would allow for "a decentralised development of the State". The location choices are in the upper, central and lower geographical regions. Such an arrangement follows the recommendations of the expert committee appointed by the Home

Affairs Ministry in 2014 to study alternatives for a new capital. Chaired by K.C. Sivaramakrishnan, the panel had argued against the need for a greenfield capital city and to instead focus on distributing locations of governance beyond the Vijayawada-Guntur-Tenali-Mangalagiri urban area, while utilising the time period of 10 years to continue functions from Hyderabad after bifurcation. The Chief Minister's idea has got support from the government-appointed G.N. Rao committee; it has recommended that the Assembly's location be retained at Amaravati, with the Secretariat and High Court moved to Visakhapatnam and Kurnool, respectively. Despite the expert committee's recommendations, the A.P. government led by the Telugu Desam Party had decided to build a grand capital in Amaravati, and had acquired large parcels of land from farmers. The Secretariat and Legislative Assembly were shifted to Amaravati in 2016, while the High Court began functioning in the beginning of 2019. Amaravati, which still requires significant development, has become a functioning State capital for all purposes now. But it is no surprise that many farmers, who had agreed to give up fertile land for the expansion of the capital as part of a land pooling scheme and were to have received residential and commercial plots among other forms of compensation, have protested the decision to decentralise capital functions. If the government limits Amaravati to hosting only the Assembly, it must take into account the concerns of affected farmers. That said, the fact that considerable work has been completed in Amaravati to utilise the fledgling city as a functioning capital must be taken into account before embarking upon the "decentralisation" idea, which was best served before the works in Amaravati began. Abandoning the plan that is already in place will render the grand city an unviable one. As in politics, in governance, timing is everything.

Trampling on grassroots

- Three years after they fell due in 2016, rural local bodies in Tamil Nadu will witness elections in the last week of this month. And, barring any further judicial intervention, urban local bodies are also likely to have elected representatives early next year. It is a travesty of the law that

these elections have been delayed. Cities, towns and villages have been under the rule of unelected officials for too long. Under a Supreme Court order, polls for all local bodies will have to be held, except in those districts that have been divided recently to create new ones. It is the first time since local self-government became the third tier of governance under the Constitution that polls have not been held on time in T.N. — timely elections were held every five years since 1996. Administrative lapses and political litigation over ward delimitation in various local bodies in accordance with the latest population figures in the 2011 Census resulted in the unprecedented delay. Originally announced on time in 2016, the notification was cancelled by the Madras High Court, citing irregularities in it. Since then, the issue of delimitation, the announcement of new districts and occasional litigation have contributed to the delay in setting in motion elections to the vital tiers of grassroots democracy. There have been frequent changes in the mode of electing mayors of city corporations and chairpersons of municipalities. Originally, direct elections were held, but it was changed to indirect mode in 2006. The present regime has changed its mind twice. In 2016, the Jayalalithaa regime opted for indirect elections, that is, only ward councillors would be elected by the people and these representatives, in turn, would elect mayors and municipal chairpersons. The current Edappadi K. Palaniswami government reversed the decision and chose the direct election mode. Recently, it once again changed its mind and restored the system of indirect election, citing “better accountability and collective responsibility”. It claimed that there was scope for conflict between a directly elected head and the councillors, and that this would be eliminated if councillors themselves elected the mayor or chairperson. Beyond all the legal and technical reasons, and political squabbles over the timing of elections, the attitude of the two main parties towards the importance of local bodies has been quite lukewarm. While the posts of the heads of various local bodies are seen as prestigious, there is much politicisation when it comes to devolving funds and letting the various tiers work independently. District panchayats, in particular, are seen as being frequently undermined, as most parties consider them

as a redundant third tier among panchayati raj institutions. While the polls are fought bitterly, the State is still some distance away from including local self-government bodies as partners in its development.

Lethal misgovernance

- The deadly fire at dawn on Sunday that swept through an unregistered bag factory in Delhi's Anaj Mandi area killing 43 workers is a shocking reminder that for every big industrial unit showcased as evidence of an emerging power, there are scores of Dickensian ratholes in which workers toil under crushing, dangerous conditions. Neither the Delhi government nor the Centre, which has control of law and order in the national capital, can pretend to be surprised at the many casualties. It is well known that poorly paid labourers live and work in several residential buildings turned into unregistered factories, and those who died due to suffocation or burn injuries were no different. Most of them came from Bihar and Uttar Pradesh, and virtually slept at night next to the machines they worked on. If it is confirmed by a probe that the victims were locked in and obstructed by materials stacked on staircases, the culpability of those responsible would be enormously higher. A small consolation is the rescue of several people given the narrow approach to the stricken building, and a mass of tangled wires. The building's owner and the manager have been arrested to mollify public anger, but administrative agencies cannot escape responsibility for allowing the factory and other such units to function illegally, without safety audits. The third deadliest building fire in the national capital in two decades, on December 8, ahead of the polls to the Delhi Assembly, will provide grist to the Opposition to pin the blame on the AAP government, which is responsible for civic services and labour issues. Delhi's Chief Minister, Arvind Kejriwal has, on the other hand, been blaming the lack of complete authority and obstruction by the Centre for his party not being able to deliver on a broader development agenda. Public safety cannot be allowed to fall victim to this irresponsible wrangling. Political parties, civil society and government must chart a new course, with a plan to make the older, built-up areas safe. At the root of chaotic urban development is the deplorable

compact arrived at between governments and violators that allows rezoning to accommodate illegal commercial establishments in residential zones, weak enforcement of regulations and post facto regularisation of illegalities. The Supreme Court of India has come down on municipal authorities in Delhi in the past for this, although culpability of building owners, as in the Uphaar Cinema case, has not been dealt with sternly. Initial financial relief has been announced for the victims in the Anaj Mandi fire, and some people will face the law, but the real test lies in whether this is treated as a watershed. Rules under the new occupational safety code must be strong enough to protect workers. Less government and lax enforcement is bad policy. It costs lives and harms the economy.

How an end-to-end railway line can help Kerala

- The Ministry of Railways granted in-principle approval for the 'Silver Line' project, a proposal of the Kerala government that involves laying the third and fourth railway lines from Kasaragod in the north to Kochuveli (Thiruvananthapuram) in the south for the movement of semi high-speed trains. The project aims to cut the travel time between the two corners from 12 hours to less than four hours.

  What was the need for such a project?

  Kerala's road networks are clogged and experience dense traffic during peak hours. According to data shared by experts, less than 10% of the state's roads handle nearly 80% of the traffic. This also gives rise to accidents and casualties; in 2018, Kerala recorded 4,259 deaths and 31,687 grievous injuries. Experts have been demanding faster transportation options including railways and waterways. However, the current railway network is congested with a large number of trains, level crossings and sharp curves. The fastest train, plying between Thiruvananthapuram and Kasaragod, takes nearly 12 hours to cover 532 km. The Silver Line project, conceived at least a decade ago, aims to connect major districts and towns with semi high-speed trains that will run on their own tracks.

  What does the Silver Line project entail?

The 532-km corridor is projected to be built at a cost of ₹56,443 crore. Trains would complete the journey at four hours instead of 12, with a maximum speed of 200 km/h. The corridor will be built away from the existing line between Thiruvananthapuram and Thrissur. But in the Thrissur-Kasaragod section, it will run parallel to the existing tracks. The semi high-speed trains will traverse through 11 of the state's 14 districts, Alappuzha, Wayanad and Idukki being the exceptions. There are also plans to connect the corridor with the international airports at Kochi and Thiruvananthapuram. The project is scheduled to be commissioned by 2024.

Who will implement the project?

The Kerala Rail Development Corporation (K-Rail), a joint venture between the Ministry of Railways and the Kerala government to execute projects on a cost-sharing basis, will be the nodal agency. The government is believed to be looking at external funding agencies. An initial investment is likely to be made by K-Rail for acquiring land. A Detailed Project Report (DPR) will be commissioned soon. Chief Minister Pinarayi Vijayan said the construction will result in direct and indirect employment opportunities for 50,000 people, and the project once completed would create direct employment for at least 11,000 people

What ad hoc teachers' protest tells us about DU recruitment

- Around 4,500 ad hoc teachers of Delhi University, who comprise around 40% of the university's teaching force, have been agitating since August over a circular by the university, which they saw as an attempt to hire them as guest teachers instead. After a call for a strike and boycott of examination duties by the university teachers' association, thousands of teachers stormed the vice-chancellor's office. The Ministry of Human Resource Development called for a meeting with the vice-chancellor in which it was decided to take certain steps to address teachers' concerns.

What triggered the unrest?

It began when the university sent out a letter to all constituent colleges and departments on August 28, advising them to "fill up the

permanent [teaching] vacancies at the earliest and till permanent appointments are made, Colleges may appoint guest faculty, if required, against new vacancies arising first time in academic session 2019-20". This resulted in confusion over what exactly these "new vacancies" were: new posts created in 2019-2020, or vacancies created with the of expiry of ad hoc teachers' 120-day contracts last month, which were to be renewed by November 20. As a result, several colleges had not extended renewal of appointment of ad hoc teachers or released their salaries, and teachers have seen this as a move to do away with the ad hoc system and to move towards the less stable guest teacher system.

How far have the issues been addressed?

In Thursday's meeting between senior UGC and ministry officials with the vice-chancellor, it was decided that the circular shall be amended to "The colleges/institutes shall fill up the permanent vacancies before the start of the next academic session without fail. During the interim period, if vacancies which have to be filled for maintaining smooth academic functioning of the colleges/institutions, adhoc/temporary/contract guest faculty can be appointed." What this effectively does is put a cap of July 2020 to fill all permanent posts. It also means all ad hoc teachers who had served during the current academic year can continue until then. In the meeting, it was also decided to tweak norms for shortlisting candidates for interviews for assistant professor appointments to favour ad hoc teachers, by giving greater weightage to their work experience. The teachers' association, meanwhile, has said the strike and current boycott of duties for end-semester exams will continue.

Why are there so many ad hoc teachers in Delhi University?

A decade ago, the number of ad hoc teachers in Delhi University was estimated at just around 500, which has multiplied to the current 4,500, or 40% of the university's strength. Several factors have led to this. According to Rudrashish Chakraborty, teacher at Kirori Mal College and former Academic Council member, one reason was that between 2008 and 2013, almost 1500 teachers retired, creating vacancies. Second, in 2006, central universities were given additional teaching

posts to adjust for the larger student intake on account of OBC reservation. Delhi University was given around 2,600 posts, of which around 1,300 were released in 2007. While the number of vacancies ballooned, the recruitment process for permanent teachers stalled, and university departments and colleges began to resort to ad hoc recruitment. Many teachers have been working in an ad hoc capacity for years, some for over eight years.

But why was recruitment of permanent teachers in stalled?

The recruitment system has changed several times, which has led to agitation, litigation and court stays. This happened in 2010 against the introduction of the Academic Performance Indication score system to screen candidates before interviews, and in 2013 against the introduction of a 200-point roster. Even when posts have been advertised, interviews have not been conducted. This has been due to a centralised, elaborate process, which has often got stuck because the university simply did not send panels of experts to colleges to interview the shortlisted candidates.

How is ad hoc hiring done?

According to the university's guidelines, an ad hoc appointment may be made "In case there is a sudden, unexpected and short vacancy, arising out of sudden sickness or death, on medical grounds (including maternity leave), abrupt leave or any other situation that may disrupt the normal process of teaching learning…" Every year in June and November, the university draws up an ad hoc panel of applicants, to be forwarded to colleges looking to recruit. The interviews in the colleges are held by a selection committee. An ad hoc teacher is paid on the same scale as a starting-level permanent teacher, coming to around ₹80,000 per month in hand. However, this amount is not subject to annual increment. Those working for many years in an ad hoc capacity have only got dearness allowance hikes. They are appointed for a period of 120 days at a time, with rules and conditions specified for leave and vacation with salary, and possible placement and promotion. While most colleges have decided to renew appointments at the end of the 120-day period, some like Shaheed Rajguru College of Applied

Sciences for Women hold interviews once a year, and some even after every 120-day period.

What is different for guest teachers?

The qualifications required are the same for ad hoc and guest teaching. However, while ad hoc teachers are appointed for 120-day periods and paid a monthly salary on the same scale as an entry-level professor, guest teachers are hired and paid per lecture. According to UGC guidelines, guest teachers are to be paid ₹1,500 per lecture, and cannot be paid more than ₹50,000. Moreover, teaching in the university effectively only happens for eight months a year, so guest teachers can only be employed and paid for those months. They are not entitled to leave and vacation with salary. The guidelines also state that "Guest faculty will not be treated like regular teachers for the purpose of voting rights for becoming the members of various statutory bodies of the university".

No more remixes, please

- In October, music composer Vishal Dadlani warned that he would sue anyone remixing any more songs composed by him and Shekhar Ravjiani. The duo, known as Vishal-Shekhar, boast of some of the most enduring hit songs in Hindi cinema in the last two decades, a period that saw a clear decline in melody. Vishal's sharp words (he called those remixing songs as "vultures") have again put into focus the trend of repackaging a popular song from the past for a new film, often for a steamy dance sequence. It is the easy way out for producers and directors to market their film. Composers will tell you how difficult it is to create an original, catchy tune. While remixes may be here to stay, Vishal's demand for enough credit and remuneration is absolutely fair. "This is not about one song, one person, one company or one remix," he said in an interview toScroll.in. "This is about a screwed-up system that allows the exploitation of what should be a composer's legacy without any regard for the original composers themselves." When asked about his own reworkings of popular songs, Vishal said those were tributes and that he had spoken to the original composers before putting them out.

More popular than originals

Remixes don't require the kind of talent that composers like A.R. Rahman possess, yet they are hugely popular. In fact, Vishal's anger is understandable as remixes, if we go by YouTube viewership statistics, are often more popular than the original compositions. Saaki Saaki composed originally by Vishal-Shekhar for Musafirhas garnered more than 80 million views in eight years, while its remix for the film Batla House, has registered more than 70 million views in just four months. Similarly, Laxmikant-Pyarelal's Ek Do Teen, composed for the 1988 film Tezaa band famous for Madhuri Dixit's iconic dance sequence, has been watched 83 million times since it was posted on YouTube nearly six years ago, while the new version, for Baaghi 2, has had 113 million views in about year and a half despite its failure to reproduce the magic of the original. Thus there is little doubt that remixes attract more attention, especially when marketed as refreshed versions of a cult original. And this is not surprising. Viewers from the younger generation, who consume videos on computers and mobile phones more than those from the earlier generations, prefer these modernised versions, especially when these songs also serve as promo for a film. It is never easy to come up with a tune as captivating and original as Ek Do Teen, but it isn't impossible for a gifted composer even in times like these. However, the fact is that there aren't many composers around today who are capable of this, or even directors who can extract such quality music from them. This is a pity given that Indian cinema — be it Hindi, Tamil, Bengali, Malayalam, Telugu or Kannada — has a proud, rich tradition of music. And yet, despite this rich tradition of music, several composers have been accused of plagiarism. Many have climbed the charts of popularity standing on the shoulders of tunes obviously lifted from other composers producing music in other languages, including Arabic, Afrikaans, English and Turkish. In fact, such is the trust our music lovers have in Indian composers that when they come across an Indian song and a foreign one with an identical tune, they assume that the former is the rip-off! Given India's rich tradition of music, music composers should take risks and produce original compositions instead of popularising what was already

popular decades ago. Old songs bring with them certain memories. Recreating them may be easy, but remixes can never produce the magic of the original. And if composers are intent on reworking original numbers, it is important, as Vishal says, that the original composers be given their due.

Fish in troubled waters (S. Sandilyan - former Fellow on Invasive Alien Species, Centre for Biodiversity Policy and Law, National Biodiversity Authority, Chennai)

- Climate change and unprecedented floods resulting from cloud bursts have facilitated the introduction of aquatic invasive alien species into new habitats in India. This phenomenon threatens ecosystems, habitats and native species. Recently, a study by Biju Kumar and others from the Department of Aquatic Biology and Fisheries, University of Kerala, revealed the role of the 2018 floods in introducing the most dangerous fish species into Kerala's wetlands. The authors said that exotic fishes such as arapaima and alligator gar were reported or caught by the residents after the floods. These are illegally imported fish that are reared by ornamental and commercial fish traders across India. Researchers say that during heavy floods, invasive alien fishes which are illegally farmed in fragile systems, including domestic aquarium tanks, ponds, lakes and abandoned quarries, effortlessly escape from captivity and enter nearby wetlands. After a while, they slowly begin to wipe out local diversity and the economy by altering the functions of the ecosystem. And yet no State or Union Territory has any strong policy or law on the illegal rearing, breeding and trading of such invasive ornamental and commercially important fish species. And it is not as though they are completely unaware of the phenomenon and its impact.

  Illegal stocking

  In Tamil Nadu, for instance, stocking illegally imported ornamental and commercially important fish species is good business. Kolathur in north Chennai is known for its ornamental fish trade (with more than 80 shops) and most of the residents in the area are involved in breeding and selling 150-200 exotic ornamental fish species. People mostly use

small cement cisterns, earthen ponds, plastic-lined pools, homestead ponds and the Retteri lake for breeding these species. And then the seasonal monsoon floods in the area wash away the exotic breeding stocks and adult fishes into freshwater bodies. During the monsoon, government officials release details about the amount of rainfall, water level in reservoirs, and how the flood paralysed essential services including transport, communication and electricity. But there is no information about biodiversity loss and the impact of the flood on freshwater diversity. India is endowed with 2,319 species of finfish. Studies from several parts of the country show that the diversity of freshwater fish is depleting at an alarming pace due to the invasion of commercially important and ornamental exotic fish species. Many native species, especially Indian major carps in various riverine systems, have been affected because of the invasion of exotic fish species such as Nile tilapia, African catfish, Thai pangus and common carp. Apart from commercially important exotic species, ornamental fishes such as guppy, piranha, suckermouth, blue perch, goldfish and platy have been recorded in rivers, lakes, traditional village ponds and other inland freshwater bodies. These also accelerate the extinction of natural varieties from local water bodies.

No commercial value

A team of researchers from Madurai Kamaraj University found that the exotic ornamental Amazon sailfin catfish poses a serious threat to the native fish species of Vandiyur Lake, Madurai. They reported that the biomass of the Amazon sailfin catfish is statistically significant compared to the indigenous varieties. This clearly shows the negative impact of this exotic aquarium fish on inland aquaculture in terms of diminished production/catch of edible fish. Further, sailfin catfish species do not hold any commercial value; therefore, people discard the species on the banks of the lake where it is not even scavenged by other animals and birds. Thus more than 15 exotic ornamental species have successfully established a reproductive population in our freshwater bodies and we still don’t know the magnitude of the impact of this species on the native diversity of fish. On September 23, 2019, the Tamil Nadu government sanctioned ₹38.52 crore to purchase

special equipment to strengthen the state disaster response force to tackle the possible impacts of the northeast monsoon. Further, 4,399 places were identified as vulnerable sites and 6,000 trained personnel were positioned across the State. There is, however, no information on the aquatic biodiversity conservation policy. We can only infer that the State government has not yet framed any policy to control and manage the escape of invasive alien fish species during the monsoon season. It is time to draft a policy in consultation with experts. The State government would also do well to establish a unique research centre to address this issue.

Packaged foods breach safe limits of salt, fat

- An array of packaged snacks and fast foods breach safe limits of salt and fat content, says a laboratory analysis by the Centre for Science and Environment. The agency tested salt, fat, trans-fat and carbohydrates in 33 popular "junk foods", which consisted of 14 samples of chips, salted snacks, instant noodles and instant soup, and 19 samples of burgers, fries, fried chicken, pizzas, sandwiches and wraps. The samples were collected from grocery stores and fast food outlets in the city. To calculate how unsafe the foods tested were, the organisation relied on the concept of the Recommended Dietary Allowance (RDA) — a daily ceiling on the amount of salt, fat, carbohydrates and transfats. The RDA is based on scientific consensus and has been agreed upon by expert bodies such as the World Health Organisation, and the National Institute of Nutrition in India. It says that, ideally, no more than 5 gm of salt, 60 gm of fat, 300 gm carbohydrate and 2.2 gm of transfat should be consumed by an adult every day. Further, the RDA from each breakfast, lunch and dinner should be no more than 25%, and that from snacks no more than 10%. The CSE found that given the size of the servings and the amount of nutrients per 100 gm, a single packet of packaged nuts, soup or noodles ended up having these salts and fats well over the recommended limits. For instance, Haldiram Aloo Bhujia, a popular savoury snack, with a serve size of 231 gm, had the equivalent of 7 gm of salt and 99 gm of total (saturated and unsaturated) fat. A single serving of the

Nestle's Maggi Masala (70 gm) exhausted 50% of the composite RDA for a snack, and a serving of Haldiram's nut cracker exhausted 35% of the salt RDA and 26% of the fat RDA, the CSE analysis found. According to the proposed draft Food Safety and Standards (Labelling and Display) Regulations, packaged food companies will need to declare nutritional information such as calories (energy), saturated fat, trans-fat, added sugar and sodium per serve on the front of the pack. The food labels are also required to declare, per serve percentage contribution to RDA on the front of the pack. Though under discussions since 2015 and several drafts — the latest one came out in July — these rules have yet to become law, and to be operationalised. The CSE took the values prescribed in the drafts for their calculations and concluded that all of the popular snacks and fast foods ought to be displaying a 'Red Octagon', a warning symbol employed in packaged foods in Chile and Peru. The Red Octagon, which should be printed on the front of the pack, has a number and the name of the food component within that indicates how widely off the RDA a particular ingredient is. Thus, a Red "3.1, Salt" on a pack of Lay's India's Magic Masala by PepsiCo indicates that the salt it contains is 3.1 times the RDA for snacks. "What we have seen is that all of the packaged foods of the various brands we tested would be in the red. This is why the powerful food industry is opposing the notification," said Sunita Narain, director general of CSE, at a press conference. The regulations, as they now stand, don't apply to fast foods such as burgers and pizzas, even though they were included in the CSE analysis.

Business & Economics

India up one rank in UN development index

- India ranks 129 out of 189 countries on the 2019 Human Development Index (HDI) — up one slot from the 130th position last year — according to the Human Development Report (HDR) released by the United Nations Development Programme (UNDP). The HDI measures average

achievement in three basic dimensions of human development — life expectancy, education and per capita income. Norway, Switzerland, Ireland occupied the top three positions in that order. Germany is placed fourth along with Hong Kong, and Australia secured the fifth rank on the global ranking. Among India's neighbours, Sri Lanka (71) and China (85) are higher up the rank scale while Bhutan (134), Bangladesh (135), Myanmar (145), Nepal (147), Pakistan (152) and Afghanistan (170) were ranked lower on the list. As per the report, South Asia was the fastest growing region in human development progress witnessing a 46% growth over 1990-2018, followed by East Asia and the Pacific at 43%. India's HDI value increased by 50% (from 0.431 to 0.647), which places it above the average for other South Asian countries (0.642). However, for inequality-adjusted HDI (IHDI), India's position drops by one position to 130, losing nearly half the progress (.647 to .477) made in the past 30 years. The IHDI indicates percentage loss in HDI due to inequalities. The report notes that group-based inequalities persist, especially affecting women and girls and no place in the world has gender equality. In the Gender Inequality Index (GII), India is at 122 out of 162 countries. Neighbours China (39), Sri Lanka (86), Bhutan (99), Myanmar (106) were placed above India. The report notes that the world is not on track to achieve gender equality by 2030 as per the UN's Sustainable Development Goals. It forecasts that it may take 202 years to close the gender gap in economic opportunity — one of the three indicators of the GII. The report presents a new index indicating how prejudices and social beliefs obstruct gender equality, which shows that only 14% of women and 10% of men worldwide have no gender bias. The report notes that this indicates a backlash to women's empowerment as these biases have shown a growth especially in areas where more power is involved, including in India. The report also highlights that new forms of inequalities will manifest in future through climate change and technological transformation which have the potential to deepen existing social and economic fault lines.

In pursuit of structural reforms

- The economic slowdown has pushed many people to demand more structural reforms from the government. But what exactly counts as a structural reform? Former Finance Minister P. Chidambaram stated that the government does not understand what structural reforms mean. He also said that only a handful of reforms in the last few decades can really be classified as major structural reforms. Few critics of the government, however, care to elaborate on what they mean by structural reforms and why such reforms are so important. At best, they spell out land and labour reforms without offering a broader framework for a structural reform programme. This has led not only to the portrayal of incremental reforms as radical structural reforms that will improve growth, but also to the adoption of bad reforms that only benefit special interest groups at the cost of the overall economy as actual structural reforms.

Free from government control

When economists talk about structural reforms, what they mean are reforms that free the economy from the control of the government and allow markets to allocate resources. The classical liberal economists of the 19th century believed that a minimalist 'night-watchman' state that limited its role strictly to the efficient provision of police, and courts that protected people's property rights and enforced contracts, could bring economic prosperity. Some even argued that the marketplace, in which multiple businesses compete to provide goods and services to consumers, can also offer better policing and legal services than an inefficient monopoly like the government. When Prime Minister Narendra Modi promised "minimum government, maximum governance" before he assumed power in 2014, the expectation was that he would turn India into a free market paradise. But in the last five and a half years, the role of the government in the economy has only increased significantly with measures such as demonetisation and GST severely undermining people's economic right to own what they earn. A minimalist or limited government, in the classical sense, however, would allow private individuals to own and exploit all economic resources. No sector of the economy would be shielded from private ownership and there would be an active attempt to disinvest

almost all the assets that are under the control of the government. It would allow individuals to freely buy and sell anything they wish at whatever price they deem fit through voluntary trade. People will also be allowed to keep almost all of what they earn from such free trade, and private contracts rather than onerous government regulations would be allowed to regulate commerce. Such unfettered free trade, while it benefits consumers, will likely create winners and losers among producers. A minimalist government, however, will have no legal powers to save any business, whether small or large, from failure. People will be allowed to freely enter or exit a market as they wish and compete against anyone they want. Such genuine free market competition would ensure that the production of goods and services rises, prices fall, and the standard of living of the masses increases many-fold as a result. It was through such a drastic cut-down in the role of the government in the economy that countries such as Hong Kong, Singapore, New Zealand and China managed to achieve great economic prosperity.

A poor ranking

The government has flaunted its performance in the World Bank's 'Ease of Doing Business' ranking to prove its commitment to reforming the economy. But India's performance in the 'Index of Economic Freedom' ranking (129 out of 180 countries), which cannot be easily influenced by cosmetic changes to a few laws, should be of concern. The ranking, which measures the degree to which an economy is market-oriented, also classifies India as a "mostly unfree" economy. If genuine structural reforms are to be expected, economic freedom should become the guiding principle of policymaking.

Future revenues critical for finance panel

- Future revenues are the most critical issue for the 15th Finance Commission, chairperson N.K. Singh said, adding that revenues from the Goods and Services Tax are the 'elephant in the room'. He also hinted at the need to consider an incentive structure for States in order to encourage increased tax collections. Mr. Singh was speaking to journalists after the fifth meeting of the Economic Advisory Council of

the Commission. The Commission has submitted its recommendation report for 2020-21 to the Finance Minister and is now working on a 'comprehensive' report for the five year period of 2021-26, he said. On Jammu and Kashmir, he clarified that the erstwhile State was being treated like any other Union Territory (UT) in the 20-21 report, and would receive grants directly from the Home Ministry, along with the other newly created UT of Ladakh. The Council discussed macro assumptions for the Commission's award period relating to real growth, the structural shift in inflation, and tax revenues and expenditure patterns at both the central and State levels. The GST structure should be made more revenue-friendly and stakeholder-friendly, he said, adding that tax changes need predictability and certainty. He suggested that while the 14% rate of GST compensation to States was mandatory under law for the initial five-year transition period, he would not recommend 'a mechanical replication' in subsequent years. Mr. Singh noted that while States have complained that GST revenues have been lower than expected, none of their Finance Ministers has raised protests, individually or collectively, in the GST Council of which they are a part. He said States had a collective tendency for a 'race to the bottom', accusing them of being 'lulled into a state of complacency' due to the assured 14% compensation cess. In the pre-GST era, State revenue officials would have worked harder to ensure that their tax collections met revenue targets, said Mr. Singh, suggesting that there may be a need for an incentive structure to encourage the State machinery to improve collections and tax compliance. His comments come two days before the GST Council meeting slated for December 18, where States are expected to push the Centre on delayed payments from GST compensation cess. There has been a shortfall of GST collections so far this year. While the government had budgeted for ₹6,63,343 crore in GST collections for 2019-20, only about 50% of the target has been collected in the first eight months.

RBI to conduct 'Operation Twist' to manage yields

- The Reserve Bank of India (RBI) will simultaneously buy and sale government securities worth ₹10,000 crore each on December 23 under its open market operations — a move aimed at managing the yields. The RBI will purchase the longer-term maturities, that are trading at a spread of 150 bps (basis points) over the repo rate, so that the yield of these papers will soften and sell the shorter duration ones. The central bank said it will buy ₹10,000 crore of 6.45% government bonds maturing in 2029 and simultaneously sell ₹10,000 crore of short-term bonds maturing in 2020. "The action of Operation Twist by the RBI today is encouraging. There is indeed a need to bring down the term premium because that remains the driving factor for long-term economic activity and addition of new investment stock," said Madhavi Arora, economist, FX & Rates, Edelweiss Securities. Market experts had suggested unconventional steps by the central bank as policy rate cuts are unable to bring down the bank lending rates proportionately. Operation Twist is a move taken by U.S. Federal Reserve in 2011-12 to make long-term borrowing cheaper.

RBI kept out Muslim long-term visa holders from property-buying right

- With the controversial Citizenship Amendment Act (CAA) coming into force, the spotlight is now on a Reserve Bank of India (RBI) circular issued back in March 2018 that allowed the now beneficiaries of the Act to buy immovable property. The RBI notification, under the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, issued on March 26, 2018, said, "A person being a citizen of Afghanistan, Bangladesh or Pakistan, belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, who is residing in India and has been granted a Long Term Visa (LTV) by the Central government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment." The CAA talks about granting citizenship to persecuted minorities, the same minorities that the RBI guidelines talked about, and from the same countries — Afghanistan, Bangladesh and Pakistan. Since these guidelines were

issued, under the foreign exchange management regulations, these were issued after consultation with the government. Central banking sources said when the circular was issued by the RBI, the NRC or CAB (Citizenship Amendment Bill) were "nowhere on the horizon." "The government had asked what it should do with those who had been residing in the country for a long time. So, it was agreed to allow them to buy property for residing and land for making a living," said a source. The source added the RBI was not aware of the government's intention, if any, nor was it discussed or asked. "The issue of citizenship comes under the domain of the Home Ministry and these issues are not discussed with the central bank," the source said. An email sent to the RBI for its comment on the issue remained unanswered till the time of going to the press. In November 2018, the RBI allowed citizens of Bangladesh or Pakistan, belonging to the same set of minority communities in those countries, who were residing in India and had applied for a LTV to open one NRO Account. "[NRO Account] will be opened for a period of six months and may be renewed at six-monthly intervals subject to the condition that the individual holds a valid visa and valid residential permit," the RBI norms said.

How Kerala's 'own bank' changes the cooperative sector — and road ahead

- Kerala Bank, an entity created by the merger of 13 district co-operative banks (DCBs) in Kerala, was officially launched on Friday — the first state-owned bank in the cooperative sector. Kerala Bank brings the state's co-operative banking sector together under a single roof, Chief Minister Pinarayi Vijayan said; it is envisaged as a people-owned and people-managed modern bank with a significant share of the banking sector. All DCBs except the one in Malappuram district, which is controlled by the opposition Congress-led UDF, have been amalgamated into Kerala Bank. At the launch ceremony, the Chief Minister invited the outlier bank to come on board, and invited it for talks with the government.

  Idea and evolution

  Kerala's "own bank" had been a promise of the CPM-led Left Democratic Front (LDF) for the 2016 Assembly elections. After coming

to power, Vijayan's government appointed a committee to study the idea of creating a Kerala Bank by amalgamating the entire co-operative banking sector into a single entity. The demand for the Kerala Bank gained momentum after the State Bank of Travancore (SBT) was merged with the State Bank of India (SBI) on March 31, 2017. The SBT, which was headquartered in Thiruvananthapuram, had been handling a major part of the government's transactions, and was seen as Kerala's own bank. In October, the Reserve Bank of India (RBI) accorded final approval for the creation of the unified bank, subject to certain conditions — the Chief Minister said these would be met, and a compliance report would be submitted to the central bank before March 31, 2020. The formation of Kerala Bank has reduced the earlier three-tier structure of co-operative banking in the state to a two-tier one.

Size and position

Kerala Bank has the second largest banking footprint in the state. Its network of 995 branches is second only to the SBI's, which has 1,215 branches across the state. While the SBI has a deposit base of ₹1.53 lakh crore in the state, Kerala Bank would have a base of ₹65,000 crore. Unlike the state co-operative bank and district co-operative banks, Kerala Bank can, in the future, accept NRI deposits, which will lead to an expansion of its deposit base. As part of Kerala Bank, the DCBs will get the status of a scheduled bank, which they have been lacking until now. The co-operative banking system in Kerala has about 30 per cent market share in deposits and loans, but this may significantly increase after Kerala Bank begins to accept NRI deposits.

Governance structure

At present, senior bureaucrats in the Co-operative Department are manning Kerala Bank, which will get a CEO next month. Ultimately, however, Kerala Bank will have a democratically elected body, in tune with the tradition in the cooperative sector. It will have a board of directors with representatives from the primary cooperative societies, the secretary of the state Cooperative Department, four ex-officio members, a nominee from NABARD, and two independent professional

directors. The nominees of the primary societies would have adequate representation for SCs/STs and women.

Gains and criticism

The new Kerala Bank could offer modern banking facilities, including online transactions and ATMs, which have been hitherto unavailable to a large chunk of clients in the cooperative sector. There would be a parity in services offered in the sector, in the interest rates for deposits as well as loans. The primary cooperative societies could take a slew of modern banking facilities to their members, and give a fillip to technology-driven banking in the rural areas. Kerala Bank will not levy a fine for customers' failure to maintain a minimum deposit. According to the government, the Bank will help the economic development of Kerala by providing financial services to development projects, especially those promoted by local self-governments, without compromising on the commercial aspect. However, the opposition has alleged that the amalgamation of co-operative banks would harm the sector. How depositors react to being brought into an ecosystem of greater accountability, including income-tax scrutiny and compliance, remains to be seen.

Challenges ahead

The state government will have the task of taking the new entity out of the shadow of politics that frequently falls on the cooperative sector, and of infusing professionalism in operations. Besides the commitment to submit a compliance report by the end of March, Kerala Bank will have to keep a sharp eye on non-performing assets at a time when the state cooperative bank is running at a loss. The 2016 demonetisation exercise, and the economic slump in the wake of two bouts of heavy floods in the state, have adversely affected the district and primary cooperative societies. Defaults in farm loans have been growing, leading to the accumulation of non-performing assets (NPAs).

Key takeaways from NCLAT order; will Mistry be back at Tata HQs?

- The National Company Law Appellate Tribunal (NCLAT) reinstated Cyrus Pallonji Mistry to the position of Executive Chairman of Tata Sons and Director of the Tata Group of companies for the remainder of his tenure.

Mistry, who was at one time the favourite protégé of Tata Sons Chairman Emeritus Ratan Tata, was unceremoniously sacked both as Executive Chairman and Director in 2016. The NCLAT held Mistry's sacking and the subsequent appointment of N Chandrasekaran to the top post at Tata Sons illegal, prejudicial, and oppressive. It set aside a July 2017 order by the Mumbai bench of the National Company Law Tribunal (NCLT), which had upheld Mistry's removal from his positions at Tata Sons and other Group companies. The NCLAT was constituted under Section 410 of The Companies Act, 2013 to hear appeals against the orders of the NCLT(s). It is also the appellate tribunal for orders passed by the NCLT(s) under Section 61 of the Insolvency and Bankruptcy Code (IBC), 2016, and for orders passed by the Insolvency and Bankruptcy Board of India (IBBI) under Sections 202 and 211 of the IBC. The order of the appellate tribunal, passed by NCLAT Chairman Justice (retd) S J Mukhopadhaya, a former judge of the Supreme Court, included directions on several major questions of corporate governance.

Minority shareholders

The appellate tribunal directed Tata Sons to consult all its minority shareholders before making any appointments in the future to the posts of Executive Chairman, Independent Director, and Director on the boards of Group companies. The NCLAT direction will empower the minority shareholders, and will force Independent Directors to take their objections more seriously. The Code for Independent Directors, which is part of The Companies Act, 2013, says that one of their functions is to "safeguard the interests of all stakeholders, particularly the minority shareholders". The directive will give a boost to the Shapoorji Pallonji Group, which is owned by Mistry's family and which, although a minority shareholder (18%), is still the biggest outside shareholder in Tata Sons, the holding company of the Tata Group.

Use of Article 75

The NCLAT has barred Tata Sons from taking any action against Mistry, Shapoorji Pallonji, Cyrus Investments, and other minority shareholders under Article 75 of the Articles of Association of the Tata Group. This provision grants Tata Sons the right to transfer the 'ordinary shares' of

any shareholder, including those of the Mistrys', bypassing a special resolution in the presence of nominated directors of Tata Trusts. In doing so, the NCLAT has ensured that any decision taken by the Tata Group does not take the Mistrys or other minority shareholders by surprise, which was one of the main allegations made by Mistry and his team.

Making public company, private

The NCLAT has held that Tata's decision to convert from a public limited company to a private company was "prejudicial and oppressive to the minority members and depositors" and, therefore, illegal. Tata Sons, which had functioned as a private concern until 1975, had to turn into a public company following the insertion of Section 43A(1A) in The Companies Act, 1956. This provision forced certain companies to turn public based on their turnover, irrespective of their paid-up share capital. The NCLAT order built on the issues of oppression and mismanagement, and observed that the company's affairs were still being conducted in similar ways — a "winding-up order" against Tata Sons would, therefore, be justified.

What had the NCLT said?

In 2017, the NCLT had observed that just because the board of Tata Sons had held a board meeting at short notice or included the item agenda (that removed Mistry from his post at the top) at the last minute, it could not be termed as a fraud. The tribunal had also upheld Tata's decision to go private because it had not "altered any of the Articles of Association so as to bring any new entrenchment to the articles already in existence". This action, the NCLT had said, could not be said to have been prejudicial to the Mistrys.

What next for the Tatas?

Tata Sons will likely move the Supreme Court as soon as it opens after the winter vacation. In the interim, they will have to call Mistry for any/all board meetings of companies where he was a Director before his ouster. The company is likely to keep in abeyance major decisions until contentions such as those on the use of Article 75 of its Articles of Association, are decided by the Supreme Court.

Will Mistry return to Bombay House?

No, and yes. Although the NCLAT passed an order restoring Mistry to the top position at Tata Sons, the execution of the order has been suspended for four weeks. This will allow the Tata Group to challenge the NCLAT decision before the Supreme Court. However, barring the direction to reinstate Mistry, the NCLAT has not stayed the execution of any of its other directions. This means Mistry will be immediately restored to his position as Director on the boards of at least three Tata Group companies, including Tata Steel and Tata Chemicals. He will, therefore, have to be invited to the board meetings of these companies, thus ensuring his return to Tata's Bombay House headquarters, albeit as only a Director.

Panel okays spectrum auction plan

- The Digital Communications Commission (DCC) approved plans to auction over 8,300 MHz of spectrum, including airwaves to be used for offering 5G services, with a reserve price of ₹5.22 lakh crore. However, in a setback to the telecom service providers (TSPs), there has been no reduction in the reserve price, as demanded by them, for the airwaves that will be put to bid in March/April 2020. "The DCC has today approved the recommendation of Telecom Regulatory Authority of India (TRAI). We are hopeful that auction should be conducted sometime in March-April," Telecom Secretary Anshu Prakash said. The Secretary said that the entire available spectrum — a little over 8,300 MHz across 22 telecom circles. Out of the 8,300 MHZ of airwaves, 6,050 MHZ are allocated for 5G services. Mr. Prakash added that an 'important change' in the payment process for the bought spectrum has been made. In the auctions, the telcos will need to pay lower upfront amount in case the spectrum won by them is not be available with the DoT in the next 30-day period.

  Upfront payment

  As per the earlier rules, successful bidders had to pay upfront 25% of the charges for sub-1 Ghz band and 50% of charges for higher frequency bands. Now, "in case the spectrum won is available later... say after six months, after eight months, the upfront payment will be 10% for sub-1 Ghz and 20% for higher frequency bands. This is so that we know that

the bidder is a serious player," he said. The spectrum which is being put on auction includes airwaves that may get vacated up to December 2021. The proposal will now be sent to the Cabinet for approval. "The DCC's decision to proceed with spectrum auctions in the near future may be fraught with challenges. With spectrum reserve prices 4 to 6 times higher than that of similar spectrum sold recently in several countries, high levels of debt and prevailing financial stress in the sector, telecom service providers will find it very difficult to raise funds to participate in the auctions," Rajan S. Mathews, DG at operators' body COAI said. He added that the quantum of spectrum in the 5G band being put up for auction will be only 175 MHz, 'woefully inadequate' for operators to roll out robust 5G networks and services.

Telecom body defers zero IUC by a year

- In a major relief for telcos, particularly Bharti Airtel and Vodafone Idea, the Telecom Regulatory Authority of India (TRAI) deferred implementation of zero-interconnect usage charge regime by a year, besides kick-starting a consultation on the need to fix minimum tariff for mobile calls and data. "For wireless to wireless domestic calls, termination charge would continue to remain as ₹0.06 per minute up to December 31, 2020...From January 1, 2021 onwards the termination charge for wireless to wireless domestic calls shall be zero," the regulator said. The BAK (bill and keep) or zero IUC regime was to come into effect from January 1, 2020. The deferment by a year will be a huge relief for Vodafone Idea and Bharti Airtel, who had pitched for postponing the implementation. However, Reliance Jio was in not in favour of deferring it. "Implementation of BAK from 1.1.2020, with present inadequate adoption of 4G technologies by consumers and asymmetries in traffic, may affect level playing field amongst service providers and in turn the effective competition in the market," TRAI said in the regulation. It added that in such capital-intensive sector, which had long gestation period and where entry of new service providers in the short run was difficult, maintaining effective competition among service providers was necessary for ensuring the affordable services to consumers.

Floor price for tariffs

In its new consultation, the regulator has sought stakeholders' view on issues related to fixing a minimum tariff for mobile voice calls and data services. TRAI has also sought answers on whether there is a need for "price ceiling" as well to safeguard consumer interest along with ensuring the orderly growth of the sector. The authority is also raised a question on whether floor prices need to be set, given that the three private telcos had recently announced price hike in the range of 15-50%. "Most economists also advise against the fixation of price controls as it leads to economic inefficiencies, consumer harm, market distortions and reduced innovation," it said. However, it added, ensuring the provision of ever-increasing data consumption and a good quality of service required a lot of investment in maintaining and improving telecom infrastructure. Comments on the issues raised in the consultation paper are invited by January 17, 2020 and counter-comments by January 31, 2020.

Life & Science

What is the Houbara bustard?

- The government of Pakistan has issued special permits to the Emir of Qatar and nine other members of the royal family to hunt the houbara bustard, an internationally protected bird species. Bustards are large, terrestrial birds that belong to several species, including some of the largest flying birds. The houbara bustard, which lives in arid climates, comes in two distinct species as recognised by the International Union for Conservation of Nature, one residing in North Africa (Chlamydotis undulata) and the other in Asia (Chlamydotis macqueenii). The population of the Asian houbara bustards extends from northeast Asia, across central Asia, the Middle East, and the Arabian Peninsula to reach the Sinai desert. According to the International Fund for Houbara Conservation (IFHC), roughly 33,000 Asian houbara bustards and over

22,000 of the North African houbara bustards remain today. After breeding in the spring, the Asian bustards migrate south to spend the winter in Pakistan, the Arabian Peninsula and nearby Southwest Asia. Some Asian houbara bustards live and breed in the southern part of their ranges including parts of Iran, Pakistan and Turkmenistan. According to IFHC, the main reasons for the houbara's decline are poaching, unregulated hunting, along with degradation of its natural habitat. While Pakistanis are not allowed to hunt the bird, the government invites Arab royals to hunt it every year. This is not the first time the Qatari Prince has got such a permit. According to a report in Dawn, he was granted permission to hunt in late 2018 for a sum of $100,000. The latest person-specific permits will allow the individuals to hunt over 100 houbara bustards over a 10-day safari during the three month hunting season between November 1, 2019 – January 31, 2020. The hunting area is spread over the provinces of Sindh, Balochistan and Punjab.

Study pushes back evolution of speech by 20,000 years

- Researchers have shown that monkeys produce well-differentiated proto-vowels, an advance that pushes back earlier estimates of when speech evolved in animals by about 2,00,000 years. The review study, published in the journal Science Advances, mentioned the theory of the "descended larynx", according to which the larynx —commonly called the voice box — must be in a low position to produce differentiated vowels before speech can emerge. According to the researchers, including those from CNRS in France, monkeys, which have a vocal tract anatomy similar to humans, had a higher larynx, and could not produce differentiated vocalisations. Considering the acoustic cavities formed by the tongue, jaw, and lips (identical in primates and humans), recent research showed the production of differentiated vocalizations is not a question of anatomy, but is related to the control of articulators. According to the current study, if the emergence of articulated speech is no longer dependent on the descent of the larynx —which took place about 200,000 years ago — scientists can now theorise much earlier speech emergence. The researchers said this could be as far back as at

least 20 million years, a time when our common ancestor with monkeys lived, and already presumably had the capacity to produce contrasted vocalisations.

Evidence of river Saraswati's existence found?

- The Indus valley civilisation which flourished in present day north-western India and adjacent Pakistan was the largest and oldest urban civilisation in the world. Nearly two-thirds of the 1,500 archaeological sites of the Harappans occur on the dried up banks of the Ghaggar river. Today, the Ghaggar is a seasonal, monsoon-fed river originating in the sub-Himalayas. The question arises about the role played by the Paleo Ghaggar, ancient counterpart of this river, in the lives of the Harappans. Did the Harappans live on the banks of a perennial river, mighty and fed by the glacial rivers arising in the Higher Himalaya, or was Paleo Ghaggar also a monsoon-fed and seasonal river that rose in the sub-Himalaya? These questions are tied to another. The Rig veda mentions a mighty, snow-fed river Saraswati on whose banks the literature was supposed to be derived. Was this then a description of the Paleo Ghaggar, making it the mythological Saraswati River itself? These questions are sought to be answered in a paper published in Scientific Reports. Researchers from Physical Research Laboratory (PRL), Ahmedabad, and Indian Institute of Technology Bombay, have analysed sand from 3-10 metres below surface of modern Ghaggar and found that it was indeed a perennial river, fed by glacial rivers in the past. "Coarse-grained white or grey sands that contain abundant white mica are typical of glacier-fed Higher Himalayan rivers such as the Ganga, Yamuna and Sutlej... We found such sand layers 3-10 metres below the surface on both sides of the modern Ghaggar in a stretch of 300 kilometres up to the Pakistan border," explains Jyotiranjan S. Ray of PRL. "Presence of this sand itself is an indication of existence of a powerful river in the past." The team identified the source of these sands by studying the strontium-neodymium isotopic ratios. They also measured the ages of the mica samples in the sand by argon-argon dating method. "We found that the isotopic ratios and Ar-Ar ages overlap with those of the rocks of the Higher Himalaya, thus we

establish that these sands have been transported by the river from Higher Himalaya to the plains," says Dr Ray. Further, the team established the depositional ages of the samples by radiocarbon dating and optical dating of mollusk shells found in the deposit. The researchers thus established that the ancient Ghaggar transported sands from glaciated regions of the Higher Himalaya. "Any river that originates from such region remains active round the year – doesn't depend on the monsoonal rains only," explains Dr Ray. The key result of the paper is that the river Ghaggar had two distinct perennial phases: one during 80,000-20,000 years ago and the other during 9,000-4,500 years ago. "The paper contains excellent isotopic geochemical data on the sediments of the river Ghaggar. On the basis of their data the authors show that the Sutlej River was flowing into the Ghaggar River to make it perennial for the Early Harappans," says Jayant Kumar Tripathi of School of Environmental Sciences, Jawaharlal Nehru University, Delhi, who is an expert in the field. In a 2004 paper in Current Science, he has studied the later phase of the river Ghaggar. "However, what made mature Harappans to stay back on the Paleo Ghaggar, remains unanswered in their paper," Prof. Tripathi adds commenting on the recent work. The authors write in the paper that the revived perennial condition of the Ghaggar, between 9,000 and 4,500 years ago can be correlated with the Rig vedic Saraswati, and that it "likely facilitated development of the early Harappan settlements along its banks".

Plants emit ultrasonic 'distress screams' when stressed

- Researchers have for the first time found evidence of plants making airborne emission of ultrasound screams when subjected to stresses. The sound contains information that can reveal the state of the plant emitting it. The researchers experimented with tomato and tobacco plants and subjected them to two different stresses — drought and cutting of stems. The ultrasound emitted is in the range 20-100 kHz and can be detected from a distance of 3-5 metres. The team led by Lilach Hadany from the School of Plant Sciences and Food Security at Tel-Aviv University which carried out the research speculates that if stressed

plants can emit ultrasound, then neighbouring plants should be equipped to hear these distress sounds too. “We don't know the mechanism of response in the plants yet. We have recently shown that plants' response to pollinator sounds involves their flowers, but we expect that receptors to ultrasound, if such exist, would be in the vegetative parts,” Prof. Hadany says in an email to The Hindu. Many moths, which use tomato and tobacco plants as hosts for their larvae, are already known to hear and react to ultrasound at frequencies emitted by the plants. “These moths may then potentially avoid laying their eggs on a plant that had emitted stress sounds,” the write. The results have been posted on bioRxiv preprint server; the manuscript is yet to be peer-reviewed. The researchers suspect that the sounds are generated by a process called cavitation — where air bubbles form, expand and explode in the xylem causing vibrations. The sounds were first recorded in the laboratory conditions using boxes that are acoustically isolated and then verified in greenhouses that were not acoustically isolated. They found that on average, tomato plants subjected to drought stress emitted 35 sounds an hour compared with tobacco that made just 11. However, when the stems were cut, the average number of sounds emitted by tomato plants dropped to 25 per hour while it increased slightly to 15 per hour in the case of tobacco. Controls emitted fewer than one sound per hour. In greenhouse, the researchers studied how the plants emitted sounds in response to lack of water. Watered tomato plants were placed in the greenhouse for 10 days without watering. Very few sounds were emitted in the first three days when there was sufficient water. But the number of sounds per day increased on the fourth to sixth day and decreased as the plants dried. Tomato and tobacco plants emitted ultrasound at different mean peak frequencies when subjected to the two stresses. In general, the two plants emitted sounds at a higher peak frequency when the stem was cut than when under drought. Under water-stressed conditions, the mean peak frequency was nearly 50 kHz for tomato and about 55 kHz for tobacco. When the stems are cut, the mean peak frequency was 57 kHz for tomato and nearly 58 kHz for tobacco plants. Plants

belonging to two different taxa also emitted ultrasound when subjected to the same stresses.

Climate of inaction

- If climate change is the defining issue of the century, the UN conference in Madrid failed miserably in galvanising action to address it. This year's outcome is all the more depressing because nearly 200 delegates representing rich and poor countries had the benefit of new scientific reports from the Intergovernmental Panel on Climate Change warning of near-certain catastrophic consequences of inaction, and an analysis from the UN Environment Programme on the gap between current greenhouse gas emissions and the limit over the coming decade. Eventually, in Spain, the Conference of the Parties to the Paris Agreement, degenerated into an unproductive wrangle over establishing a market system to trade in carbon credits earned through reductions in emissions, with some countries eager to cash in on poorly audited emissions savings from the Clean Development Mechanism of the Kyoto Protocol that preceded the Paris pact. Such horse trading stands in contrast to the real losses from extreme weather events that climate-vulnerable countries, India included, are facing with frightening regularity: even insured losses worldwide during 2017 and 2018 together stood at a record $225 billion, while the bulk of destruction had no such risk cover. These dire data should have imbued the climate negotiations with urgency and purpose, but the final declaration was desultory, merely expressing serious concern at the emissions gap in seeking to limit temperature increase to 1.5° C. Climate negotiators might have tossed the more intractable questions — raising $100 billion a year from 2020 for developing countries, creating a strong framework to address loss and damage from climate events and transferring technology to poorer countries on reasonable terms — to the next conference a year later, but they cannot avoid rising pressure from civil society in several countries for concrete action. One of the models that will be closely studied is the Green Deal that has been announced by the European Commission, with binding targets for member nations to cut emissions by at least 50% by 2030

and go net zero by 2050. This approach could potentially make the EU the leader in global climate action, a position that the U.S. never adopted, and China will take longer to aspire for. India's own status as a low per capita carbon emitter offers little comfort as its overall emissions are bound to grow. With a low base compared to other major nations, it may well achieve its initial voluntary targets under the Paris Agreement, but a shift away from fossil fuels is inevitable in the longer term. As it prepares to face calls for higher ambition in 2020 and beyond, India has to involve its States in mitigation and adaptation efforts. Death and destruction by frequent storms, floods and droughts should lead to urgent cohesive action.

- The Paris accord established the goal of avoiding a temperature increase of more than 1.5 degrees Celsius (2.7 degrees Fahrenheit) by the end of the century. So far, the world is on course for a 3- to 4-degree Celsius rise, with potentially dramatic consequences for many countries. Negotiators in Madrid left some of the thorniest issues for the next climate summit in Glasgow in a year, including the liability for damages caused by rising temperatures that developing countries were insisting on. That demand was resisted mainly by the United States. U.N. Secretary-General António Guterres said he was 'disappointed' by the outcome.

How cars can run on hydrogen

- Ahead of next July's Tokyo Olympics, Japan is gearing up to put on its roads thousands of vehicles based on a hydrogen cell technology, also known as 'fuel cells'. Japan's lead in the practical application of the hydrogen fuel cycle, and the ongoing research in this field at the International Research Centre for Hydrogen Energy at Kyushu University, are being studied closely by the Indian government as it readies a hydrogen-fuelled blueprint. This comes in the backdrop of the Supreme Court directing the government on November 13 to look into the feasibility of introducing such technology to deal with air pollution in the National Capital Region.

  How does the hydrogen fuel cell work?

At the heart of the fuel cell electric vehicles (FCEV) is a device that uses a source of fuel, such as hydrogen, and an oxidant to create electricity by an electrochemical process. Put simply, the fuel cell combines hydrogen and oxygen to generate an electric current, water being the only by-product. Like conventional batteries under the bonnets of automobiles, hydrogen fuel cells too convert chemical energy into electrical energy. From a long-term viability perspective, FCEVs are billed as vehicles of the future, given that hydrogen is the most abundant resource in the universe.

So is an FCEV a conventional vehicle or an electric vehicle (EV)?

While the fuel cells generate electricity through an electrochemical process, unlike a battery-electricity vehicle, it does not store energy and, instead, relies on a constant supply of fuel and oxygen — in the same way that an internal combustion engine relies on a constant supply of petrol or diesel, and oxygen. In that sense, it may be seen as being similar to a conventional internal combustion engine. But unlike the combustion engine cars, there are no moving parts in the fuel cell, so they are more efficient and reliable by comparison. Also, there is no combustion onboard, in the conventional sense. Globally, EVs are bracketed under three broad categories:

* BEVs such as the Nissan Leaf or Tesla Model S, which have no internal combustion engine or fuel tank, and run on a fully electric drivetrain powered by rechargeable batteries.

* Conventional hybrid electric vehicles or HEVs such as the Toyota Camry sold in the country combine a conventional internal combustion engine system with an electric propulsion system, resulting in a hybrid vehicle drivetrain that substantially reduces fuel use. The onboard battery in a conventional hybrid is charged when the IC engine is powering the drivetrain.

* Plug-in hybrid vehicles or PHEVs, such as the Chevrolet Volt, too have a hybrid drivetrain that uses both an internal combustion engine and electric power for motive power, backed by rechargeable batteries that can be plugged into a power source.

* FCEVs are widely considered to be the next frontier in EV technology. FCEVs such as Toyota's Mirai and Honda's Clarity use hydrogen to

power an onboard electric motor. Since they are powered entirely by electricity, FCEVs are considered EVs — but unlike BEVs, their range and refuelling processes are comparable to conventional cars and trucks.

To what uses can the technology be put?

The hydrogen fuel cell vehicle market is dominated by Japan's Toyota and Honda, alongside South Korea's Hyundai. While the successful development of hydrogen would provide energy for transportation and electric power, an advantage is the wide availability of resources for producing hydrogen. Japan's Ministry of Economy, Trade and Industry (METI) published a 'Strategic Roadmap for Hydrogen and Fuel Cells' in 2014, with a revised update in March 2016, with a goal to achieve a hydrogen society. Stationary fuel cells — the largest, most powerful fuel cells — are being designed to provide a cleaner, reliable source of on-site power to hospitals, banks, airports and homes. A fuel cell continues to produce energy as long as fuel and oxidant are supplied. Portable fuel cells could find other applications beyond vehicles.

What are the advantages and disadvantages of fuel cells?

Fuel cells have strong advantages over conventional combustion-based technologies currently used in many power plants and cars, given that they produce much smaller quantities of greenhouse gases and none of the air pollutants that cause health problems. Also, if pure hydrogen is used, fuel cells emit only heat and water as a by-product. Such cells are also far more energy efficient than traditional combustion technologies. Unlike battery-powered electric vehicles, fuel cell vehicles do not need to be plugged in, and most models exceed 300 km of range on a full tank. They are filled up with a nozzle, just like in a petrol or diesel station. But there are problems. While FCEVs do not generate gases that contribute to global warming, the process of making hydrogen needs energy — often from fossil fuel sources. That has raised questions over hydrogen's green credentials. Also, there are questions of safety — hydrogen is more explosive than petrol. Opponents of the technology cite the case of the hydrogen-filled Hindenburg airship in 1937. But Japanese auto industry players The Indian Express spoke to argued that a comparison was misplaced because most of the fire was attributed to diesel fuel for the airship's

engines and a flammable lacquer coating on the outside. Hydrogen fuel tanks in FCEVs such as the Mirai are made from *highly durable carbon fibre*, whose strength is assessed in crash tests, and also trials where bullets are fired at it. The Mirai and Clarity have a triple-layer hydrogen tanks made of woven carbon fibre, which the manufacturers claim is completely safe. The other major hurdle is that the vehicles are expensive, and fuel dispensing pumps are scarce. But this should get better as scale and distribution improves. Japan is going full steam ahead. Prime Minister Shinzo Abe declared in Davos this year that Japan "aims to reduce the production cost of hydrogen by at least 90 per cent by the year 2050, to make it cheaper than natural gas".

What is the progress in India?

In India, so far, the definition of EV only covers BEVs; the government has lowered taxes to 12%. At 43%, hybrid electric vehicles and hydrogen FCEVs attract the same tax as IC vehicles. The Ministry of New and Renewable Energy, under its Research, Development and Demonstration (RD&D) programme, has been supporting various such projects in academic institutions, research and development organisations and industry for development. Fourteen RD&D projects on hydrogen and fuel cells are currently under implementation with the support of the Ministry. Between 2016-17 and 2018-19, eight projects were sanctioned and 18 completed. The Ministry of Science and Technology has supported two networked centres on hydrogen storage led by IIT Bombay and Nonferrous Materials Technology Development Centre, Hyderabad. These involve 10 institutions, including IITs, and IISc, Bangalore.

Tech titans under watch

- After years of blistering growth driven by an ever-growing share of the online ad market and big data, the giants of Silicon Valley, including Amazon, Apple, Facebook and Google, are facing an unprecedented challenge — calls by lawmakers to curb their market monopoly power. There are two sources of tension relating to these four tech firms that have caused alarm across the United States, Europe and elsewhere: first, that they may have engaged in anti-competitive behaviour over

many years thus undercutting smaller potential rivals and holding onto an outsized market share; and second, that as a result of this metastatic growth, they now have a vast influence on politics, policy and personal reputations across the spectrum, making cost of data privacy breaches by these firms catastrophic. Thus, in July 2019 the United States Justice Department and the House Judiciary Committee separately announced major antitrust investigations into Google, Facebook, Amazon and Apple promising "a top-to-bottom review of the market power held by giant tech platforms."

What are the main concerns with each platform?

Amazon: Given the disruptive effect of its online sales platform on traditional retail markets and smaller sellers, lawmakers for years and in multiple countries have contemplated regulations to clamp down on Amazon's alleged anti-competitive practices. For example, questions have often been raised on whether Amazon favours its self-branded products over those of third-party sellers, by requiring other sellers to use its advertising services or fulfilment network, by rankings of product search displays, or by using data on other sellers to tweak its own offerings to its advantage. Regulators are also said to be looking into the conglomerate's acquisition of Whole Foods, an upmarket U.S. grocery chain.

Apple: In September 2019, U.S. congressional investigators demanded documents from Apple to shed light on the company's App Store policies, specifically regarding how Apple ranks search results on that platform, questions surrounding how Apple determines the share of revenue it takes from in-app purchases, and the exclusion of certain competing apps from the Store. For example, Spotify and those behind certain parental-control apps have filed complaints to regulators in the U.S., Europe, and Russia about Apple's alleged restriction of their apps once the tech giant introduced self-made competing services.

Facebook: Regulators have focused their attention on Facebook's acquisitive streak in capital markets, for example, the U.S. Federal Trade Commission (FTC) enquiry into whether Facebook defensively purchased certain companies to maintain its pre-eminent market position in the social networking ecosystem. Specifically, questions

have centred on Facebook's relationship with Onavo, a data analysis firm that Facebook purchased in 2013, which then allegedly helped the social media giant see off potential competitors. Investigators have also started looking into allegations that Facebook may have cut off certain third-party apps from its data.

Google: This company handles more than 90% of online searches across the world, so regulators have been observing its delivery of search results under a microscope. In recent years concern has grown over the fact that Google has increasingly been sending users to its own sites to answer their queries, including products such as Google Flights and Google Maps. Thus, Google may find itself grilled by regulators over whether it is abusing its search dominance, to the detriment of rival content producers. The European Union has already fined Google $5.1 billion in 2018.

Who is leading the charge against the tech firms?

In March 2019 U.S. Senator and Democrat Elizabeth Warren announced as part of her 2020 presidential campaign, a plan to break up Amazon, Facebook, and Google. Shortly thereafter, on June 3, the House of Representatives' Antitrust Subcommittee announced a bipartisan investigation into competition and "abusive conduct" in the tech sector. In mid-July, the U.S. Department of Justice publicly announced that it had started an antitrust probe into "market-leading online platforms", following which Facebook confirmed that it was being investigated by the FTC, and Google that it was facing a Department of Justice antitrust probe. Over the next few months Attorneys-General across 50 U.S. states and territories announced a joint antitrust probe into Google and Facebook, and the House Antitrust Subcommittee made an enormous information demand to all four tech giants, requesting 10 years' worth of detailed records relating to competition, acquisitions, and other matters relevant to the investigation. The case against these four Silicon Valley firms is also bolstered by the fact that U.S. President Donald Trump could hardly be considered an ally. In August 2018, he warned that tech companies could be in a "very antitrust situation."

What is the prognosis for the antitrust case?

In the U.S. the cases against the four tech firms will likely be centred on possible violations of the Sherman and Clayton Antitrust Acts — two laws that have been foundational in the past century of federal antitrust prosecutions. While the firms have, more or less, complied with the various investigations against them, they have on occasion provided only limited information.

Does the 'OK' now signify 'white power'?

- It's a common emoji, and in India, a gesture that people frequently make: forefinger bent to touch the tip of the thumb, creating a circle, and the other three fingers outstretched (or perhaps slightly bent). It conveys approval, a "superb" or "fantastic" that one may want to say at the end of a satisfying meal. It is also a yogic symbol, often made while sitting in padmasana, with eyes shut and palm facing upward. As an emoji, it is translated as "OK" or "all well". In general, the gesture has traditionally been used in contexts that are positive. But of late, the gesture (and emoji) has sought to be appropriated by those seeking to convey a less benign sentiment. In the United States, and some parts of Europe, the "OK" sign is now used to suggest *"White power".* According to Anti-Defamation League, the international nongovernmental organisation that has been fighting anti-Semitism and hate in the Western world for nearly a century now, the gesture is now an *extremist meme*. It was reported in American media on Sunday that US military officials had opened an investigation to determine whether some young cadets and junior naval officers who were seen making the sign during a football match between the Army and Navy on Saturday were trying to convey a racist message.

  The origin of the sign

  A connection has long been made between the gesture and "OK", the Americanism for approval, agreement, or assent that went into currency in the 19th century. Some believe it started with a humorous piece that the journalist Charles Gordon Greene wrote in 1839 in The Boston Morning Post, a newspaper that he founded, using "OK" as an abbreviation for "Oll Korrect" ('all correct', misspelled). People started to make the gesture, seen as vaguely resembling an 'O' and 'K'.

Connection to 'White power'

According to a report in The New York Times, it started in early 2017 when some users on the anonymous online message board 4chan began "Operation O-KKK" — to see if they could lead American liberals and the mainstream media to believe that the gesture was actually a secret symbol of White power. "We must flood Twitter and other social media websites with spam, claiming that the OK hand signal is a symbol of white supremacy," one of the users posted, according to The NYT report. The prankster suggested that everyone should create fake social media accounts with "basic white girl names" to spread the notion wide. Soon, however, the 4chan hoax ceased to be one: Neo-Nazis, Ku Klux Klansmen, and assorted White supremacists began to use the gesture in public to signal their presence and to spot potential sympathisers and recruits. "For them, the letters formed by the hand were not O and K, but W and P, for 'White Power'," The NYT report said. As the popularity of the gesture grew, it added on more symbols — the Southern Poverty Law Center, an American nonprofit legal advocacy that is focussed on civil rights and public interest litigation especially against White supremacist groups, has identified memes featuring the alt-right mascot Pepe the Frog (in picture left), among others.

Users of the gesture

Other than random White supremacists, American media reports have named several high-profile far right figures as having flashed the sign openly in public. These include Milo Yiannopolous, the British provocateur who was once an editor for Breitbart News, and Richard B Spencer, a promoter of the 2017 White Power rally in Charlottesville, Virginia. In 2018, Roger Stone, a veteran lobbyist and friend of President Donald Trump's, was photographed showing the sign alongwith a gang of White supremacists. The Anti-Defamation League said the gesture had graduated to a "sincere expression of white supremacy" after the Christchurch mosques terrorist Brenton Tarrant was seen showing the sign at a court hearing in March this year.