Current Affairs, 22nd to 28th December, 2019

International

US – Turkish Relation

➔ Rising tensions in U.S.-Turkey relations are threatening to upset North Atlantic Treaty Organisation (NATO) unity. In the latest of a series of incidents, Turkish President Recep Tayyip Erdoğan has threatened to shut down two U.S. bases in retaliation for the proposed American sanctions on Ankara over purchasing Russian weapons. The U.S. and Turkey are the largest and second largest standing armies of NATO, respectively. There are U.S. nuclear warheads in the Incirlik airbase, a critical facility for American operations in West Asia. Mr. Erdoğan has warned that Incirlik and the Kurecik radar base would be shut if there are sanctions. U.S.-Turkey ties began slumping in recent years after Washington's refusal to extradite Fethullah Gülen, a U.S.-based Turkish Islamic preacher who is accused by Ankara of orchestrating the failed 2016 coup against Mr. Erdoğan. The U.S. decision to arm and assist Kurdish rebels in Syria against the Islamic State was another blow. Ankara sees the People's Protection Units, the main Syrian Kurdish militia that became an American ally in the anti-IS war, as an affiliate of the Kurdistan Workers Party, the Kurdish militia on the Turkish side. In return, Turkey moved closer towards Russia, now trying to raise its regional profile, and invaded Kurdish-held towns in northern Syria earlier this year. Turkey's decision to purchase the Russian S-400 missile system despite U.S.-NATO opposition, was the tipping point. After the disintegration of the Soviet Union, NATO — founded as a Soviet counterweight — remained as a vehicle of western military might and continued to expand to Russia's borders, creating tensions between Russia and the West in the recent past. But with the resurgence of populist, nationalist leaders in several western countries, the NATO's relevance has been called into question several times; U.S. President Donald Trump and French President Emmanuel Macron have used the words "obsolete" and "brain death", respectively. Fast-deteriorating ties between the U.S. and Turkey is adding to the crisis. The Trump administration has already suspended Turkey from the F-35 programme, citing concerns over Russia spying on the fighter jet's capabilities using the S-400 system's radar. Earlier this month, the U.S. Senate Foreign Relations Committee approved a Bill seeking sanctions on Turkey over the S-400 purchase and the Syria offensive. But Ankara seems determined to go ahead with the S-400 deal and even buy advanced Russian aircraft if the U.S. does not deliver the F-35s. And with threats to shut down Incirlik and Kurecik bases, it is now clear that the cracks are wide open. The question the Atlantic alliance faces in this hour of crisis is not just whether the U.S. and Turkey would manage to resolve their differences, but also whether NATO, a Cold War relic, could stay relevant in a post-Cold War era where bilateral ties are fast-changing.

A Hard Brexit?

➔ More than 40 months after the June 2016 referendum vote to leave the European Union, Britain will exit the EU on January 31. With the passage of Prime Minister Boris Johnson's Brexit deal in British Parliament, it is now almost certain that the country would exit the European Union (EU) on or before the current deadline — January 31. Mr. Johnson became

Prime Minister after his predecessor Theresa May's repeated attempts to get lawmakers' support for her Brexit deal failed. Mr. Johnson first reached a new agreement with the EU and then called fresh elections. With his party's resounding win in the parliamentary election and a surge in the number of Brexiteers among Conservative lawmakers, the passage of the Bill in the House of Commons was a mere formality. The deal got the support of 358 lawmakers against 234. The agreement deals with issues such as citizens' rights, the settlement amount the U.K. has agreed to pay the EU and an arrangement to avoid physical barriers between the Northern Ireland, which is part of the U.K., and the Republic of Ireland, an EU member. The accord will be put on vote in the House of Commons once more, and then the upper chamber, the House of Lords, will vote on it. The formalities in the U.K. are expected to be over by early January and the deal will then go to the EU Parliament. Once the EU lawmakers ratify it (which is expected on January 29), the U.K. will formally exit the union. A formal exit, however, doesn't mean that the tedious Brexit process is over. Even after January 31, the U.K. will continue to remain in the EU single market and customs union, at least for 11 months — this means trade will continue as usual. Mr. Johnson's biggest challenge is to reach another agreement with the EU on the country's future relationship with the bloc. He has ruled out extending talks beyond the December 31, 2020 deadline, which means a no-deal exit can still not be ruled out. Furthermore, Mr. Johnson faces legislative and political challenges ahead even if the current deal goes through the EU hurdle. His government has to pass a series of new legislation replacing the existing EU laws.

Challenges Ahead

Under the terms of withdrawal, Northern Ireland will continue to remain within the EU jurisdiction after Brexit. The government will enforce customs checks for goods traded across the Irish Sea to the rest of the U.K., increasing costs for the bulk of small enterprises. The regulatory divergence within U.K. territory is the compromise London has conceded to protect the EU's single market. The arrangement would maintain the existing soft border between Northern Ireland and the Republic of Ireland, which has underpinned the region's tenuous peace since the 1998 Good Friday Agreement. The new scenario could strengthen demands in Belfast for unification with Dublin, potentially imperilling the U.K.'s constitutional integrity. Brexit has strengthened calls for a second referendum on independence by the Scottish National Party, which won a big majority in the UK elections. Mr. Johnson faces challenges on many fronts.

Jamal Khashoggi Case: Justice denied

➔ A Saudi Arabian court this week sentenced five men to death, convicted three to jail terms and acquitted three others for the gory murder of dissident Saudi journalist Jamal Khashoggi in October 2018. The verdict, described by some as a "mockery of justice", appears to have accepted the official Saudi version of the events surrounding his assassination in Saudi Arabia's Istanbul consulate in Turkey — that Saudi intelligence officials carried out an unsanctioned, rogue operation to execute a vocal critic of the authoritarian regime in Riyadh. However, multiple reports and accounts point to an operation likely planned at the highest level of government: a de facto indictment of Saudi Crown Prince Mohammed bin Salman, his top adviser, Saud al-Qahtani, and the former deputy intelligence chief, Ahmed al-Assiri. Turkish intelligence inputs include video evidence that two Saudi hit squads arrived at the consulate the day before Mr. Khashoggi was killed, and grisly audio recordings and other

proof of a scuffle, followed by his suffocation, and then the sawing of his bones. Unsurprisingly, his body was never recovered, and the Saudi establishment initially claimed that Mr. Khashoggi had left the consulate premises. Later, after further Turkish evidence was provided that a body double had left the consulate shortly after he was killed, Riyadh fell back on the "rogue agent" theory. The flip-flopping statements on what transpired, the closed-door trial that led to this week's court verdict, and the resolute denial that Mr. bin Salman or Mr. al-Qahtani had masterminded this scheme, have done much to degrade the Saudi regime's overall credibility. Subsequent reports by CIA and UN experts found it "inconceivable that an operation of this scale could be implemented without the Crown Prince being aware, at a minimum, that some sort of mission of a criminal nature, directed at Mr. Khashoggi, was being launched." There has also been political blowback against Riyadh: in December 2018 a bipartisan group of U.S. Senators introduced a sharply-worded resolution rebuking Mr. bin Salman for being "complicit" in the assassination, despite resistance from the White House. When Mr. bin Salman became Crown Prince in 2017, it was on the ostensible promise of reforming the Saudi socio-economic system toward more freedom and transparency, perhaps even a hint of democracy and modernity. Yet that promise was quickly belied when he conducted a major purge of prominent Saudi Arabian royals, senior ministers, and business chiefs, in an apparently ruthless bid to consolidate his grip on power. While Mr. bin Salman may continue to enjoy the trappings of global influence based on Riyadh's vital energy links with oil-importing nations, and through his reciprocal cordial ties with U.S. President Donald Trump, it is doubtful whether the stiflingly autocratic Saudi governance structure can continue in its present form without being undermined by serious fault lines that are sure to emerge.

Afghanistan Elections

➔ The announcement of preliminary results for the Afghanistan Presidential election is a significant step for India's war-torn neighbour. The fourth Presidential poll since the Taliban's fall in 2001, it consolidates the country's democratic process in the face of odds, including continuing violence and terrorism there. According to the Independent Election Commission, President Ashraf Ghani has won 50.64% of the votes counted, which, if ratified, will obviate the need for a second round of polling. A second round — probably only after winter — would prolong the uncertainty around the polls, given that even these results took more than three months to announce. That these polls were held was a miracle, having been delayed for months, and almost cancelled after progress in reconciliation talks with Taliban leaders, who do not recognise the electoral process. The U.S.'s decision to cancel the talks in September — now resumed — gave the necessary breather for the September 28 polls and counting to be carried out. But questions remain. Voter turnout was a record low, with only about a quarter of 9.6 million registered voters voting. Thousands of votes were also disqualified after biometric match failures and other irregularities, setting off allegations of voter fraud. As a result, Afghanistan's former Chief Executive Officer and Mr. Ghani's chief rival, Dr. Abdullah Abdullah, has rejected the preliminary results. Mr. Ghani's vote margin over Mr. Abdullah is only about 214,769, and if more votes are disqualified during the review process, the men may have to fight the second round. This will possibly be more divisive for Afghanistan given that Mr. Ghani, a Pashtun leader, has drawn much of his support from the Pashtun-majority south and Mr. Abdullah has won mainly in the Northern areas with Tajik presence. The U.S.-Taliban talks also cast a shadow over whether the results will be respected if the Taliban negotiates its way into a power-sharing arrangement in Kabul. Setting aside

the concerns, Prime Minister Narendra Modi congratulated Mr. Ghani for winning the elections, a gesture which will be noted by Mr. Ghani and Vice President-elect Amrullah Saleh. Mr. Modi reaffirmed India's close and strategic partnership with Afghanistan since 2010. The move came in sharp contrast to the rest of world that has chosen to be more cautious at present; the U.S. Ambassador has reminded all that "many steps remain" before the final results are certified and declared, and the UN has called for all candidates to "safeguard and complete the election". It will be in everyone's interests, particularly the Afghans who braved violent attacks to go out and vote, if the remaining steps of the electoral process are completed at the earliest, and democracy is reaffirmed in Afghanistan.

The Musharraf Verdict

➔ The courts have been particularly active in dispensing judgments and justice against numerous civilian representatives. They have also passed two critical judgments against the military. In November 2017, a sit-in took place near Islamabad by a newly formed religious political party called the Tehreek-e-Labbaik Pakistan (TLP). A Suo motu case was taken up by the Supreme Court and in its judgment in 2018 it ordered "action against army officers who engaged in political activity" supporting the TLP in the sit-in. The judgment cast aspersions on the Pakistan military's secret Inter-Services Intelligence (ISI) wing and felt that there was a perception that the ISI might have been involved in the sit-in. It also felt that the Director General (DG) of the Inter Services Public Relations (ISPR) had "taken to commenting on political matters". Clearly, the military and its leadership could not have been pleased by such new-found judgments. However, the subsequent involvement of the superior judiciary in military affairs was an even bigger surprise and a reflection of an attempt to assert a new sense of its power and independence. Just a three weeks before the high treason judgment against Gen. Musharraf by the Supreme Court of Pakistan, it suspended the three-year extension in the services of the current Chief of Army Staff, General Qamar Bajwa — it was to have taken place smoothly, as it has in the past, on November 29, 2019, the day he was to retire. The court extended his tenure by a mere six months, asking Parliament to find constitutional means to deal with such extensions.

The Military Reacts

The Musharraf high treason judgment drew the wrath of the DG-ISPR who issued a press release immediately after, stating that the decision "has been received with a lot of pain and anguish by the rank and file of Pakistan Armed Forces". Gen. Musharraf, with his exemplary record, the press release stated "can surely never be a traitor". Clearly, the military and its establishment have not been pleased by the Supreme Court's judgment. Immediately after the announcement of the judgment, General Bajwa visited General Musharraf's former unit, the SSG, and was photographed raising a clenched fist. While the military has expressed its displeasure and disappointment in this series of judgments by issuing press releases and holding press conferences, the military's B Team, the incumbent government of Prime Minister Imran Khan, has also risen to the defence of the military, perhaps trying to pay back much support that the military has provided to the civilian government. Since the civilian government has repeatedly stated that it is on the "same page" as the military, this was to be expected.

Jarring Note

What has been surprising, however, has been the utter silence from the two main political parties on the Musharraf High Treason case — that of Nawaz Sharif and Asif Ali Zardari. Perhaps the saddest aspect of the Supreme Court's independent stand in following its interpretation of the Constitution has been the absence of support by political parties which ought to have benefitted the most by such a judgment. This judgment clearly enhances democracy in Pakistan, but if those who are supposedly democracy's champions are unable to celebrate a huge symbolic victory, it only reaffirms the perception that despite three civilian elected governments since 2008, the military continues to rule Pakistan. Without the support of democratic forces, it is improbable that even the Musharraf High Treason judgment would deter the military from taking any sort of political action it feels necessary in the "national interest". Yet another opportunity to strengthen democracy in Pakistan may have been lost.

Hong Kong Protesters Rally for Uighurs

➔ Hong Kong riot police pepper sprayed protesters to disperse crowds in the heart of the city's financial district after a largely peaceful rally in support of China's ethnic Uighurs turned chaotic. Dozens of police marched across a public square overlooking Hong Kong's harbour to face off with protesters who hurled glass bottles and rocks at them. Earlier in the afternoon more than 1,000 people had rallied calmly, waving Uighur flags and posters, as they took part in the latest demonstration in over six months of unrest. A mixed crowd of young and elderly people, dressed in black and wearing masks to shield their identities, held up signs reading "Free Uyghur, Free Hong Kong" and "Fake 'autonomy' in China results in genocide". The protest comes after footballer Mesut Ozil caused a furore in China after he criticised the country's policies toward the Muslim ethnic minority in the north-western region of Xinjiang. "I think basic freedom and independence should exist for all people, not just for Hong Kong," said a 41-year-old woman surnamed Wong who attended the protest with her husband. UN experts and activists say at least 1 million Uighurs and members of other largely Muslim minority groups have been detained in camps in Xinjiang since 2017 under a campaign that has been condemned by the United States and other countries. Beijing says it is providing vocational training to help stamp out separatism and to teach new skills. It denies any mistreatment of Uighurs.

Why EU Green Deal Matters

➔ The annual climate talks ended in Madrid last week with a disappointing outcome. The talks were unable to define the rules of a new carbon market to be set up under the Paris Agreement, the only major agenda before it. Nor were they able to persuade countries to commit to increase the scale of climate actions by next year, a demand being made again and again in view of scientific assessments that show that current efforts to tackle climate change were not enough. While the meeting was still on, the European Union, whose 28 member countries are together the third-largest emitter of greenhouse gases in the world after China and the United States, came up with an announcement on additional measures it would on climate change. Called the European Green Deal, the EU announcement was hailed as a major step forward, even though it needs complementary efforts from other countries to make a significant impact.

The Two Key Decisions

Two major decisions are at the heart of the European Green Deal. One is about achieving "climate neutrality". The EU has promised to bring a law, binding on all member countries, to ensure it becomes "climate neutral" by 2050. Climate neutrality, sometimes also expressed as a state of net-zero emissions, is achieved when a country's emissions are balanced by absorptions and removal of greenhouse gases from the atmosphere. Absorption can be increased by creating more carbon sinks like forests, while removal involves technologies like carbon capture and storage. Over the last few months, there had been a growing demand for countries to commit to net-zero emissions by 2050. The UN Secretary-General had convened a special meeting on the side-lines of the General Assembly session in September to persuade countries to commit to this target. Over 60 countries had agreed to scale up their climate actions, or to the 2050 target, but these were all relatively small emitters. The EU is now the first major emitter to agree to the 2050 climate neutrality target. It has said it would bring a proposal by March next year on a European law to enshrine this target. The second decision pertains to an increase in its 2030 emission reduction target. In its climate action plan declared under the Paris Agreement, the EU was committed to making a 40 per cent reduction in its emissions by 2030 compared to 1990 levels. It is now promising to increase this reduction to at least 50 per cent and work towards 55 per cent. Even at 40 per cent, the European Union had the most ambitious emission reduction targets among the developed countries. The US, for example, had agreed to cut emissions by 26-28 per cent by 2030 from 2005 levels, but having withdrawn from the Paris Agreement, it is under no obligation to fulfil even that target. The EU also happens to be only one among major emitters to retain the 1990 baseline for emission cuts, originally mandated under the Kyoto Protocol for all developed countries. Most other countries have shifted their baselines to 2005 or even later under the 2015 Paris Agreement. The Green Deal includes sectoral plans to achieve these two overall targets, and proposals for the policy changes that would be required. For example, it has proposals for making the steel industry carbon-free by 2030, new strategies for transport and energy sectors, a revision of managements of railway and shipping to make them more efficient, and more stringent air pollution emission standards for vehicles.

Better Than Others

The European Union, as a whole, has been doing better than other developed countries on reducing emissions. In 2010, the EU had pledged to reduce its emissions by at least 25 per cent by 2020 from 1990 levels. By 2018, it claimed to have achieved 23 per cent reduction in emissions. In terms of emission reductions, it probably is on track to meet the 2020 target, unlike any developed country outside the EU. Canada, which walked out of the Kyoto Protocol, reported last year that its emissions were down 4 per cent from 2005 levels, but compared to 1990, this was an addition of about 16 per cent. Japan, another country to have abandoned the Kyoto Protocol, said its emissions for the year ending March 31, 2018 had come to about 8 per cent below the 2013 baseline it has chosen for itself. But this is a miniscule decrease compared to 1990 levels. Even the EU, however, has not been fulfilling all its climate obligations. The Kyoto Protocol required the rich and developed countries to provide finance and technology to the developing countries to help them fight climate change. In those respects, there has been little climate money flowing out of the EU, especially for adaptation needs of developing countries, and transfer of new climate-friendly technologies has been mired in patent and ownership complications. This is the reason why

developing countries, like India and China, have been repeatedly raising the issue of unfulfilled obligations of developed countries in the pre-2020 period, that is covered by the Kyoto Protocol.

Still Miles to Go

The Green Deal is important but inadequate in itself to achieve the emission reductions that scientific assessments say would be required to save the world from catastrophic and irreversible impacts of climate change. There has been no signal from other big emitters, including large developing countries like China and India that they were considering immediate scaling up of their climate actions. While announcing the deal, the EU urged other countries to raise the ambition of their actions as well. "As long as many international partners do not share the same ambition as the EU, there is a risk of carbon leakage, either because production is transferred from the EU to other countries with lower ambition for emission reduction, or because EU products are replaced by more carbon-intensive imports. If this risk materializes, there will be no reduction in global emissions, and this will frustrate the efforts of EU and its industries to meet the global climate objectives of the Paris Agreement."

Foreign Affairs

How Pakistan Grants Citizenship, And What Provisions Cover Its Minorities

➔ The newly passed Citizenship Amendment Act makes it easier for religious minorities of three neighbouring countries to get Indian citizenship. What are the constitutional and legal provisions for citizenship and rights of religious minorities in neighbouring countries of India? A look at Pakistan:

How Does the Preamble to Pakistan's Constitution Compare with The Preamble to India's?

The preamble to the Indian Constitution declares the country as a "sovereign, socialist, secular, democratic republic", with the terms "socialist" and "secular" having been added by the 42nd Amendment, 1976. On the other hand, as many as 60 Constitutions in the world refer to God including those in Germany, Brazil, Greece and Ireland. Pakistan's Constitution starts with "In the name of Allah, the most beneficent, the merciful", acknowledges sovereignty of God in respect of the universe, and contains references to Muslims and Islam. When this provision in the Objective Resolution was moved by Liaquat Ali Khan on March 12, 1949, it was opposed by non-Muslim members of Constituent Assembly. Sris Chandra Chattopadhya said, "There is no place for religion in the State... The state religion is a dangerous principle."

Does Pakistan Give Citizenship on The Basis of Religion?

Although an Islamic state, Pakistan does not have any religious test for citizenship. Its Citizenship Act, 1951 is similar to India's Citizenship Act in certain respects may be seen as more liberal. Section 6 lays down that any person who migrated to Pakistan before January 1, 1952 is a citizen. Section 3 gives citizenship on the commencement of the Act (April 13, 1951) to anyone who, or any of whose parents or grandparents, was born in the territories included in Pakistan on March 31, 1973. Pakistan grants citizenship to any person who migrated there before April 13, 1951 (India's cutoff is July 19, 1948, except in Assam, where it

is March 25,1971) from any territory in the subcontinent with the intention of permanently residing there. Like India's law, Section 7 in Pakistan says that a person who migrated to India after March 1, 1947 shall not be a citizen of Pakistan except if (s)he returned under resettlement or permanent return. While Section 4 in the Pakistan law lays down that every person born in Pakistan after the commencement of the Act shall be a Pakistan citizen by birth, India has added restrictive qualifications by amendments in 1986 (one parent should be an Indian citizen) and 2003 (both parents should be Indian citizens, or one a citizen and the other not an illegal migrant). Section 5 of the Pakistan Act talks of citizenship by descent if one of the parents was a Pakistani citizen at the time of the person's birth. J&K migrants to Pakistan are deemed to be Pakistan citizens until Kashmir's relationship with Pakistan is finally determined. British residents were similarly deemed to be citizens. Citizenship can also be given to Commonwealth citizens by the government.

What Is Different in The Way Pakistan And India Define Freedom of Religion?

Unlike the preamble to the Constitution of India, Pakistan's Constitution explicitly lays down in the preamble itself that "adequate provision shall be made for the minorities freely to profess, practice freedom of religion and develop their culture" and that "adequate provision shall be made to protect legitimate interests of minorities and backward classes". Of course, the expression "legitimate interests" in respect of minorities is restrictive. Unlike India, Pakistan gives the right to freedom of religion only to citizens. In India everyone, including foreigners, has freedom of religion and that's why foreign missionaries have a right to propagate Christianity. Unlike in India, freedom of speech in Pakistan specifically includes freedom of press – but this is subject to "glory of Islam". Due to this restriction, Pakistan has a regressive blasphemy law with a mandatory death penalty, which runs contrary even to fundamental principles of Islamic criminal law. Its widespread abuse raises questions about Pakistan's commitment to free speech.

What Steps Has Pakistan Taken to Protect The 'Legitimate Interests' of Minorities, As Provided For?

Article 36 says the state shall safeguard the legitimate rights and interests of minorities including their due representation in the federal and provincial services. While religious minorities do face discrimination, the Constitution makes a provision of reservation for them. In the National Assembly, 10 seats are reserved for them. In Balochistan, though religious minorities constitute just 1.25% of the population, reservation for them is 4.62 %; in Punjab, they are 2.79% and have reservation of 2.16%; in Sindh, they are 8.69% and reservation is 5.36%; in NW Province, they are 2.46% but reservation is just 0.56%. Hindus in West Pakistan (today's Pakistan) in 1951, after migration to India of about 5 million post-Partition, were just 3.44 per cent. In the 1961 Census, non-Muslim population got reduced to 2.83 per cent in today's Pakistan. This went up to 3.25 per cent in 1972, 3.30 per cent in 1981, and 3.70 per cent in 1998.

Are There Personal Laws for Religious Minorities in Pakistan?

Yes. Although there is a provision that laws that are inconsistent with the state religion are to be struck down as unconstitutional, Article 227(3) of Pakistan's Constitution does exempt personal law of minorities from this provision. In India, any provision of personal law that is inconsistent with the Constitution is null and void. Triple talaq was thus declared invalid in

2017. In 2016, Sindh province, which has the highest number of Hindus in Pakistan, passed legislation outlawing forced conversions. The Punjab Assembly enacted the Sikh Anand Marriage Act in 2018.

Nation

The Rhetoric and Reality of Capital Punishment (Prashant Singh - Supreme Court Advocate)

➔ Following the Supreme Court's dismissal of review petitions by all four convicts in the Nirbhaya rape and murder case, the four have moved one step closer to the gallows. In the light of this, and the repeated demands to punish all rape convicts with the death penalty, it becomes important to examine empirical evidence on the topic. If the experience of the past century is taken as a guide, it is clear that death penalty as a measure to end sexual violence has completely failed. In 1965, only 23 nations had abolished the death penalty. But, subsequently, criminal justice systems across the world lost confidence in this mode of punishment. Today, over two-thirds of countries have given up on capital punishment either in law or in practice. The standards by which nations conduct themselves have evolved. But, in India, we continue to go against the tide.

Against Natural Justice

In the system of criminal justice worldwide, including in India, underpinning the element of sentencing is the 'Theory of Punishment'. This is classical law, proved so by having stood the test of time for centuries. It stipulates that there should be four elements of a systematic punishment imposed by the state: the protection of society; the deterrence of criminality; the rehabilitation and reform of the criminal; and the retributive effect for the victims and society. Capital punishment, in its very essence, goes against the spirit of the 'Theory of Punishment', and by extension, natural justice. The first element, 'protection of society,' is not served by imposing the death sentence any better than by incarceration. This has been proven time and again as inmates have spent decades on death row, harming no one, but being brutalised by the inhuman punishment meted out to them. Second, there are several factors which effect criminal activity and deterrence is only one of them. In a UN survey, it was concluded that "capital punishment deters murder to a marginally greater extent than the threat of life imprisonment." The report of the Justice J.S. Verma Committee said that capital punishment is a regressive step and may not provide deterrence. The committee recommended the life sentence for the most grievous of crimes. It is not just statistics that prove the case against deterrence, so does logic. A reasonable man is deterred not by the gravity of the sentence but by the detectability of the crime. Third, the facet of 'reform and rehabilitation of the criminal' is immediately nullified by the prospect of capital punishment, ad oculos. This leaves only the final element — 'the retributive effect'. Killing should never be carried out based on the primal and emotive desire among human beings for revenge. Revenge is a personalised and emotional form of retribution, which often loses sight of proportionality. A comparative study of death row conflicts shows that the jurisprudence in this regard is skewed against the weaker sections. Justice P.N. Bhagwati, said that "death penalty in its actual operation is discriminatory for it strikes mostly against the poor and

deprived". The reasons include lack of adequate legal assistance to the marginalised. The Death Penalty Project has conclusively shown the manner in which wrongful capital sentencing is carried out. In the United States alone, over 350 people have reportedly been wrongfully sentenced in the last century. Hence, in the light of the recent incidents of heinous violence perpetrated against women, it becomes imperative for the judiciary not give in to the public clamour for making capital punishment mandatory for rape convicts. Public angst and emotions cannot be an alternative to reason and logic. There needs to be better enforcement of law in response to valid questions on justice but death penalty holds no answers.

RTI Related News

- The Right to Information Act's role in fostering a more informed citizenry and an accountable government has never been in doubt ever since its implementation in 2005. But there have been persistent and growing misgivings. Section 4 of the Act calls for pro-active and voluntary dissemination of information, but only a few Central and State institutions have published relevant information; here, Rajasthan has taken a lead through its Jan Soochna portal. The other problem has been persisting vacancies in the State and Central Information Commissions, which was raised in a plea in the Supreme Court on Monday. A three-judge Bench led by the CJI allowed the request and asked the Centre and States to expedite filling up the vacancies. The CJI also curiously observed that officials were sensing fear leading to paralysis of action due to the working of the RTI, going on to elaborate that the kind of queries that were sometimes being asked were not always in public spirit and were posed by people who had no "locus standi" in the matter regarding the queries. This argument by the CJI is difficult to accept as the RTI Act explicitly rejects the need for locus standi in Section 6(2) — "an applicant making request for information shall not be required to give any reason for requesting the information...". This clause is present for vital reasons — seeking locus standi in order to respond to public requests could result in a chilling effect as public authorities (PAs) could choose to deny information to general citizens on subjective grounds. Besides, information commissioners and public officials have the authority to reject requests based on criteria that enable exemption from information disclosure. Data on RTI requests since 2005 show that the yearly rejection rate (requests rejected as a percentage of those received) has come down steadily to 4.7% in 2018-19. A change in the Act that seeks locus standi as a criterion could dramatically increase this number. Rather than focusing on locus standi, public authorities would be advised to provide for greater voluntary dissemination on government portals, which should ease their load. A Transparency Audit report submitted to the Central Information Commission (CIC) in November 2018 sought feedback from 2,092 PAs under the CIC to evaluate implementation of Section 4 of the Act. Only 838 (40%) responded and even here, 35% of the PAs fared poorly with little transparency in parameters such as organisation and functions, budget and programme, e-governance, and other information disclosures. The other key misgiving with RTI implementation has been the persisting problem of vacancies in the CIC and State commissions — the CIC has four vacancies and 33,000 pending cases. After the top court's directions, this lacuna should be addressed by governments quickly.
- Chief Justice of India Sharad Arvind Bobde called for a "filter" to check "abuse" of the Right to Information (RTI) Act. "There is paralysis and fear about this Act. People are not taking decisions... We want to find a way to stop the abuse of RTI Act," he said. Bobde's remarks came a month after the Supreme Court declared the office of the CJI a public authority under

the ambit of the RTI. Over the years, the Supreme Court has stressed the importance of transparency under RTI at times, and also remarked on its overuse at other times.

For A Stronger RTI

DENIAL OF INFORMATION: On December 16, 2015, in Jayantilal N Mistry vs Reserve Bank of India, Justice M Y Eqbal and Justice C Nagappan observed: "It had long since come to our attention that the Public Information Officers under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to... The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy."

NGOs UNDER RTI: In DAV College Trust and Managing... vs Director of Public Instructions on September 17, 2019, a Bench of Justice Deepak Gupta and Justice Aniruddha Bose declared that NGOs are not beyond the RTI Act. This was based on an examination of the question whether NGOs are substantially financed by the government. The Bench observed, "In our view, substantial means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard and fast rule can be laid down in this regard. Substantial financing can be both direct or indirect. To give an example, if a land in a city is given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed. Whether an NGO or body is substantially financed by the government is a question of fact which has to be determined on the facts of each case." Because of this observation, the spotlight falls of several NGOs that have been getting public money and were not covered under the RTI. There are societies directly controlled by politicians, but fighting cases that they are not covered under the transparency law.

Critical of Overuse

TIME CONSUMED IN REPLYING: In Central Board of Secondary Education (CBSE) & Anr vs Aditya Bandhopadhyay and Others in 2011, the Supreme Court said: "The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties." According to estimates, nearly 60-70 lakh RTI applications are filed in India every year, and activists have questioned whether addressing these would require 75% of the time of government staff. Several public authorities have used this observation while denying information, ignoring the fact in the same case, the Supreme Court had ordered disclosure of the requisite information.

PERSONAL AND PUBLIC: In Girish Ramchandra Deshpande vs Central Information Commission & Ors in October 2012, a Bench of Justices K S Radhakrishnan and Dipak Misra observed, "The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression 'personal information', the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right." Various public authorities have used this order to deny information on cases/inquiries going on against government officials.

Genesis of The Law

It was the Supreme Court that had sown the seeds of the RTI Act when, in 1975, in State of Uttar Pradesh vs Raj Narain, Justice K K Mathew observed, "The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security." Since that remark, the country saw many demands for an RTI Act; 12 states had enacted their own transparency laws before it was passed as a central legislation and implemented in 2005. Before the RTI Act, the Supreme Court advocated for the people's right to know in Union of India Vs Association for Democratic Reforms in 2002. It observed, "Voters' (little man-citizens') right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers." This judgment was to make provision for declarations of assets, liabilities and criminal cases against electoral candidates, but for government officials the information is often denied by several public authorities, using the Supreme Court observation of October 2012. Section 6(2) of the RTI Act says: "An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him." Section 8(1)(j) says, "The information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person" under the RTI Act. In Bhagat Singh vs CIC in 2007, then Delhi High Court Justice Ravindra Bhat (now a Supreme Court judge) observed: "Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself."

Bearing the Brunt of Slack Laws (Maya John - Assistant Professor, Jesus And Mary College, New Delhi, And A Social Activist)

➔ The huge fire that engulfed a residential-cum-production unit in a congested part of Delhi in the early hours of December 8, killing over 40 people, has exposed the precarity of the every-day life of workers in this country. Their unfortunate deaths have merely caused the

authorities responsible to indulge in a blame game, without shame, while conveniently sidestepping the larger question of systemic labour rights violation. It is evident that numerous industrial clusters have mushroomed in the by lanes of residential localities and slums in our big cities, not merely due to a handful of erring officials of civic agencies but also due to the wider structure of episodic or literally, non-existent regulation of labour conditions in micro-, small- and medium-sized industrial and commercial establishments. In these scores of smaller establishments, the workers are mostly migrants, and tend to work long hours for meagre wages. Often, they are crowded into living quarters inside the production unit itself. Such pervasive informality stems from the limited coverage of labour laws, indicating that the hapless victims of the recent fire were victims of a much greater catastrophe — the lack of state regulation of several kinds of work relations and workplaces.

Out of Reach Laws

Indeed, key labour laws in India consistently elude a large section of workers who are denied rights and benefits on the pretext of less regular work contracts, length of employment, nature of establishment (seasonal or perennial), size of the workforce, etc. It is only a minuscule section of organised workers who have actually been granted the same. Nevertheless, the present conjuncture is characterised by a new and more offensive attack on labour by capital. A dominant discourse on the "ease of business" aggressively projects India's labour laws as a fetter on the development of the free market. Utilising the image of protection extended by the law to organised workers of mostly large industrial establishments, employers' lobbies have successfully projected India's labour laws as cumbersome, a hindrance to employment generation, and, thus, intrinsically "anti-labour". Any regulation or interventionist approaches to industrial relations have increasingly become a thing of the past. Employers' claims about the lack of labour market flexibility in India are of course unsustainable, given the high levels of employment of contract labour in all kinds of industrial and commercial establishments, steady growth of the informal sector, high labour turnover, the pattern of extended overtime put in by a majority of workers, the growing presence of apprentices and "fixed term" workers in industrial enterprises, the pattern of deskilling or high-skilled workers entering lower-skill segment jobs, as well as the presence of a weak trade union movement which is unable to prevent retrenchment. If we focus on the phenomenal growth of India's informal sector and informal work relations, it is worth noting the specific context in which this development has unfolded. The context is one of deregulation of a large number of work relations; this is most evident in the watering down of the provisions of labour inspection, the growing paradigm of self-certification by employers of their compliance with labour laws, and the tweaking of many statutory labour laws on occupational safety standards, work hours, minimum wage, compensation, industrial disputes, etc. by successive governments, both at the State and Central level.

Retreat of The State

Taken together, the exemptions provided to smaller industrial and commercial establishments from furnishing proof of their compliance with statutory labour laws, as well as labour law amendments aimed at diluting the authority of the labour inspectorate, have greatly enhanced the power of employers across the board. The "private power" of employers to unilaterally fix wages, extract overtime, manage leaves, determine compensation, etc. has substantially increased with the steady withdrawal of the state from

regulation of labour-capital relations that exist in myriad workplaces — from an Anaj Mandi in bustling north Delhi, to a real-estate construction site in Borivali, Mumbai to a garment factory in Tirupur, Tamil Nadu, to a brick kiln in Gaya, Bihar. Like it or not, promotion of the self-certification system, the continuous weakening of the labour inspectorate by successive governments and persistent dilution of labour laws pose uncomfortable questions, especially when we recognise the intense exploitation of labour by employers, who to stay competitive, consistently push down labour costs by circumventing labour rights. How can employers, who often tend to violate labour rights, themselves become law enforcers/certifiers in the new framework of deregulated industrial relations? The brutal reality is that workers contribute their sweat and blood in the making of this economy, and in return the economy gives them a pittance. How many more workers' lives have to go up in flames before our conscience is awakened?

Reservations Need to Continue for Anglo-Indians (Robyn Andrews - Teacher At Massey University, New Zealand; Dolores Chew At Marianopolis College, Montreal, Canada; And Uther Charlton-Stevens At Volgograd State University, Russia)

➔ The Union Cabinet recently approved a proposal to end the constitutional provisions that guarantee the reservation of two seats for the Anglo-Indian community in the Lok Sabha and in State Assemblies. The decision not to renew this provision was based on the view that the community is doing well and does not need these political reservations. Our view is that this premise is inaccurate. While Census data are not available (as Anglo-Indians are no longer identified as a separate category in the Census survey), those working on the ground with members of the community have experience and evidence that tell a different story. And this is supported by the government-commissioned Ministry of Minority Affairs report (2013) on the situation of Anglo-Indians. Based on surveys conducted among people belonging to the community in a number of cities, the report documented poor economic and social conditions for too many. Among the major challenges and problems faced by people of the community, the report observed, the most significant ones related to identity crisis, lack of employment, educational backwardness, lack of proper facilities and cultural erosion. The document also explicitly commended the assistance Anglo-Indians receive from their nominated MPs and MLAs, stating that "representatives of the Anglo-Indian community in the State Assemblies and local leaders of the community are working hard for the welfare and progress of the community".

A Forward-Looking Move

Nomination of seats for Anglo-Indians in the Lok Sabha was a testament to the fair-minded and forward-looking vision of the founding fathers of the Republic, whose understanding of how to build a successful democracy has rather uniquely stood the test of time. Frank Anthony made the case for special representation on behalf of the community following which Mahatma Gandhi agreed to his request for three seats in the Constituent Assembly, thereby giving Anglo-Indians a voice in the creation of India's Constitution. Sardar Vallabhbhai Patel as Chairman of the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas was the person most directly responsible for the granting of these special concessions to this community, scattered across the country. Representing an All-India community, Anthony and his successors in the Lok Sabha used that voice to provide an independent, national view of the interests of India as a whole. Even when supporting

their own community's causes, particularly in areas like education, they advanced the national interest and greatly benefited the country. The presence of Anglo-Indian MLAs in many State legislatures similarly provided a constructive pro-national voice, less tied to parochialism or provincialism, and emphatically against linguistic and religious separatism and similar narrowly communal interests. Unfortunately, the present Lok Sabha has no representation from this community. In recent years, under its current president-in-chief, Barry O'Brien, the All-India Anglo-Indian Association has continued to expand, creating and promoting positive political engagement. Other community organisations have also been engaged in such work. It would be a great loss to the nation if these voices were to be further marginalised by hasty decisions premised on short-term political considerations.

Some Success Stories

While there certainly are success stories in the community, the existence of many not-so-successful ones must also be acknowledged. A radical decision like that involving scrapping of reservations ought to have been based on a thorough examination of the position of the community as a whole, and not on the status of some eminent individuals. It should also be noted that many success stories exist because of the work of dedicated community members, including those who serve or have served as MLAs and MPs. We would therefore conclude that the Indian government needs to continue giving reservation to this marginalised community. The costs to the state here are minimal. But retaining the reserved seats would demonstrate its ability to respond to the needs of those among the most vulnerable people. This would also be a recognition of encouragement for the work done on the ground by grassroots groups involved with the community. In the near future, the community can also possibly find representation in the National Commission for Minorities. A stronger, less socioeconomically marginalised Anglo-Indian community would benefit the nation as a whole. And the community needs all the support it can get.

Are Fears Over the CAA Misplaced?

➔ A day after asserting at an election rally that those "creating a storm" against the Citizenship Amendment Act (CAA) can be "identified by their clothes itself", Prime Minister Narendra Modi tweeted that "no Indian has anything to worry regarding this Act". It is unfair to dismiss without careful consideration the government's claim that Indians have nothing to fear from the CAA. Not even its critics can deny that all that the CAA does is to offer a benefit: citizenship. It does not take away anything from anyone. And, it offers the benefits of citizenship to persecuted religious minorities from Afghanistan, Pakistan and Bangladesh. True, it doesn't offer this benefit to persecuted Ahmadiyyas or Shias from these countries. It is discriminatory towards persecuted non-Indians who are Muslims. But what has that got to do with Indians, or Indian Muslims, for that matter? As has been pointed out umpteen times by Home Minister Amit Shah, the CAA doesn't even refer to Muslims. So why is it being said that this law targets Indian Muslims?

No CAA Without NRIC

For an answer, we don't need to look beyond the Home Minister's own statements. Mr. Shah has repeatedly underscored two things: one, he will implement the National Register of Indian Citizens (NRIC), extending the NRC exercise conducted in Assam to the rest of India; and two, the sequence is all-important: he will implement the CAA first, and only after that,

the NRIC. Put simply, the CAA is a safety net that will ensure, and insure, the citizenship of all Hindus, Sikhs, Christians, Buddhists, Jains and Paris — not just the lakhs of Hindus classed as "illegal migrants" by the Assam NRC, but also others all over India who might be categorised as "foreigners" when the NRIC is implemented. The citizenship of all of them will first be secured through the CAA, and only then, after all non-Muslims are protected with requisite citizenship-related documentation, will the all-India NRC or NRIC be implemented. If there is no NRIC, there would be no need for the CAA either. The NRIC's objective is to divide the people domiciled in India into two categories: citizens and "illegal migrants". The CAA's objective is to pre-emptively rescue, prior to the NRIC exercise, the citizenship of all Indians except those whose religion finds no mention in the CAA.

Threat of Omission

It's simple arithmetic: add all the religious groups under threat of exclusion by the NRIC (Hindus, Buddhists, Muslims, Sikhs, Jains, Christians, Parsis). Subtract from this set all the religious groups secured by the CAA (Hindus, Buddhists, Sikhs, Jains, Christians, Parsis). We are left only with Muslims as the remainder. They will be the only community excluded from the 'legislative benevolence' of the Indian state as incarnated in the CAA. Ready to be scooped up, like so many gasping fish, by the NRIC net. Every Indian who is puzzled by the intensity of the anti-CAA protests sweeping the country needs to answer a few simple questions: What happens when, after Hindu, Sikh, Buddhist, Jain, Parsi and Christian residents of India who are excluded by the NRIC are granted citizenship, thanks to the CAA, only Muslim "non-citizens" remain? Will these stateless people be sent to detention camps? Or will they be accorded an inferior status in a hierarchy of citizenship where non-Muslims occupy a higher position? Even if the government were to announce that it won't implement the CAA, the very existence of this legislation is a danger to the social fabric of the country, for it is a tremendous enabler of hate speech. The world's foremost experts on Genocide Prevention consider hate speech the prime harbinger of genocide. "The Holocaust did not start with the gas chambers. It started long before with hate speech," observed Adama Dieng, the UN Secretary General's Special Adviser on Prevention of Hate Speech, on Prevent Genocide Day this month. As a political tool, the CAB-NRIC combo has the potential to encourage hate speech, especially at election time. As an administrative tool, it weakens constitutional safeguards against genocidal machinations, which could prove deadly in the unlikely event of the world's largest democracy mutating into a majoritarian state sympathetic to such machinations.

Exclusionary Precedents

There is ample historical precedent for exclusionary citizenship laws and the ends they served. The Reich Citizenship Law of 1935 stripped German Jews of their citizenship, and everyone knows what came after. Closer home, the 1982 Citizenship Law in Myanmar rendered Rohingya Muslims stateless, despite the fact that they were indigenous to the Arakan region. Myanmar is currently facing charges of genocide at the International Court of Justice. Assurances by the government that "no Indian will lose citizenship" are to be welcomed. But anti-CAA protesters are convinced that under the CAA-NRIC regime, sections of Muslims will cease to be "Indians" anyway. Once they lose their citizenship, the government can still claim that no "Indian" has lost citizenship, for it is the government which decides who is an Indian and who isn't. If it is indeed the case that all fears about the CAA are misplaced, and it is only "vested interests" that are misleading the nation, then it is easy

for the Prime Minister to dispel such misapprehensions. Instead of blandly insisting that "not a single Indian will lose citizenship", he only needs to declare categorically that the government will never, ever conduct anything like the NRIC. And he must repeat this assurance in every election rally, tweet it out, and reiterate it in his radio address. Can he do so? If he cannot, or will not, then what does that say of the intent behind the CAA?

Many Mutinies

➔ After erupting in revolt against the Citizenship Amendment Act (CAA), Assam and other North-eastern States have substantially calmed. People will withdraw to their daily lives soon, but mistaking it for normalcy as the Centre characteristically does in such situations would be dangerous. The Northeast is inhabited by diverse populations, sharing borders with several neighbours. Assertive ethnic politics, including secessionism and resistance to migration into the region, has been a defining character of the area. Grievances of indigenous populations are genuine, but it is difficult, even counterproductive, to try to resolve them by privileging one group over another. Applying a religious test to such an exercise, as the CAA seeks to do, is mindless and dangerous. The Northeast's ethnic divergences have been delicately — and barely — managed with the collaboration of local power-brokers and grant of special property and cultural rights to communities. The BJP's inability in appreciating diversity has long ceased to surprise anyone, but its insistence on aggravating dormant fault lines and inflaming new passions is baffling. The CAA has wrecked the Assam Accord of 1985 and exhumed sleeping hostilities. Prime Minister Modi's declaration of his government's commitment to cultural and linguistic rights of Northeast communities, once the region went up in flames, was welcome, though late. It takes meaningful gestures, not copious words, to hold together diverse populations in the pursuit of common goals. It is a pity that the BJP, despite its ambitions to make India a superpower, cannot comprehend the elementary truth that triggering numerous mutinies across the nation is an impossible route to that. After the subterfuge on Kashmir, which involved responsible government functionaries lying to the public, the trust deficit of this government among vulnerable communities has multiplied. The BJP has made inroads in the Northeast and is in power in all seven States. In the 2019 Lok Sabha election, it won a majority of the region's 25 seats. The party mistook its victories for an approval of its Hindutva politics, it now appears. Hindutva seeks to subordinate all identities to an overarching Hindu identity, but societies cannot be shoehorned into such narrow politics. The CAA seeks to provide a legal imprimatur to the BJP's blatant politics of turning the Northeast's ethnic fault lines into a religious one, by excluding Muslims alone. By pitting Bengali-speaking Hindus who have moved around in the region against their Muslim counterparts, the party hopes to reinforce itself in West Bengal also. The current tempest will soon pass, but this turmoil will not cease. To undo the misadventure of CAA, the Centre must show courage and hold back, and the leadership must demonstrate statesmanship. That will serve the nation well.

The Distinct Cry of An Imperilled Frontier (Pradip Phanjoubam - Senior Journalist and Author Based in Imphal)

➔ The truth is, going by UNESCO's definition of endangered languages, all of the 200 and more languages spoken in the Northeast, with the exception of Assamese and Bengali, are in the vulnerable category. Even in the case of Assamese, though it is the language of the majority in the State with about 15 million speakers (Census 2011), they are still a tiny minority when

the larger region of Bangladesh, Bengal and Assam is considered. Bengali speakers in Assam total about 9 million (Census 2011); however, neighbouring Bangladesh alone has 164 million speakers of the same language. The fear in Assam of being overwhelmed by an unceasing influx of people from Bangladesh therefore is nothing beyond legitimacy. This is a peculiar situation often described as "a majority with a minority complex"; its consequences have resurfaced in the region time and again, yet few take cognisance of it, perpetuating the phenomenon. In Bhutan in the 1980s, when a lakh or so Nepali migrants were evicted from the country, and even in the current Rohingya crisis, it is this same and largely ignored "population anxiety" that lies at its roots.

Issue of Marginalisation

Bertil Lintner, Swiss journalist and author who has been very closely associated with the region, has pointed out in a recent interview that the Rohingya crisis is nowhere near the popularly projected binary of Muslim versus Buddhist. The ethnic Rakhines, numbering about two million in the Rakhine state — shared with the Rohingya — were the ones feeling the pressure of a continuing population influx from Bangladesh, expanding the Rohingya population. That the Myanmar government favoured the Rakhines was always obvious but it may be noted that the crisis was precipitated when a previously unheard-of militant organisation, the Arakan Rohingya Salvation Army, made a coordinated attack on 30 Myanmar police camps in August 2017. This major incident prompted the Myanmar government to begin its brutal ethnic cleansing campaign. Even now, says Mr. Lintner, the presence of seven lakh Rohingya refugees in Bangladesh close to the Chittagong Hill Tract, is making small ethnic Buddhist communities such as the Chakmas and Marmas uneasy: they could become marginalised if the refugees were to be resettled among them. These are tragedies that are indeed multi-layered but often only one is made visible.

Language and Survival

A closer look at the UNESCO classification of endangered languages will illuminate further the Northeast's reaction to the CAA. If a language is vulnerable because of the small size of the number of speakers, it becomes more so if the language is spoken only in certain domains — for instance at home, but not at schools and offices, etc. It becomes definitely endangered if parents speak the language and children only know the language but do not speak it as mother tongue. It becomes critically endangered if the grandparents' generation speak the language, parents know it but do not use it, and children do not know it any more. Extinct languages are those languages which no longer have any speakers. In the UNESCO list, several languages in the Northeast have already become extinct; many more are critically endangered. As Ganesh N. Devy, cultural activist and the man behind the People's Linguistic Survey of India campaign, has said in an interview, when a language dies, a world view dies with it. Under the circumstances, the response of the Northeast to the CAA, is not merely tribal xenophobia as many have portrayed it to be with patronising condescension, but a desperate survival throe. Nari Rustomji, a bureaucrat known for his love of the region and who served there during India's troubled decades of Partition, sensed this mood with empathy. In his book, Imperilled Frontiers: India's North-eastern Borderlands, he observed that migration at a pace the host communities can absorb without detriment to their own social organisms is unlikely to cause problems. Indeed, the ethnic and cultural diversity of the Northeast show that migrants and their integration have always been a part of the historical reality of the region. Large scale and rapid influxes, therefore, are the problem.

Provoked and compelled by the imperial ambition of Burmese Konbaung ruler, King Bagyidaw, whose army invaded and occupied Assam and Manipur starting 1819, the British intervened and took over Assam (which then was virtually the entire Northeast with the exception of Tripura and Manipur) and formally annexed it in 1826 after the signing of the Treaty of Yandabo to make it a part of its Bengal province. Manipur was left as a protectorate state. As Assam was at the time unfamiliar with British colonial administration and education, educated Hindu Bengalis from neighbouring Sylhet became the favoured agents to fill the colonial bureaucracy and carry forward the colonial project. It is from this position of power, that Hindu Bengalis dominated Assam's political as well as cultural spheres, at one point even having Bengali declared the official language of Assam on the plea the latter is a dialect of the former. This was predicted to ultimately provoke a reaction from the Assamese middle class as it came of age. There was also the Muslim Bengali peasantry which migrated to Assam, but those who arrived before politics in India began polarising on religious lines, found it much easier to assimilate and adopt the Assamese identity.

Bitter Link with The Past

When Assam was separated from Bengal and made a separate chief commissioner's province in 1874 and then in 1912 after Curzon's 1905 partition of Bengal was withdrawn, a reluctant Sylhet which felt it was better off as part of Bengal, came to be affiliated with the new province. At the time of Partition, the equation changed and Sylhet's chance of remaining with India was for it to be treated as a part of Assam. The then Assamese leadership refused this as Assam would then have become Bengali majority. Sylhet had to face a referendum separately and by a thin Muslim majority was awarded to Pakistan. The current migration issue is also a consequence of this bitter politics of antagonism of the past. Nobody is perfectly innocent or guilty in this sordid drama, and the way forward has to be on the path of truth and reconciliation that Nelson Mandela showed.

Citizenship Amendment Law, Decoded

➔ The Citizenship Amendment Bill (CAB) became law after receiving the President's assent on Thursday, following a bruising debate in Parliament. Assam has been in the throes of violence, when Rajya Sabha took up the Bill after it was passed in Lok Sabha, with its capital under indefinite curfew, and Army and paramilitary columns rolling across multiple towns. At least three Opposition ruled states — Kerala, Punjab and West Bengal —have said they will not implement the new citizenship law, and legal challenges have been made in the Supreme Court. Why is a change in the law, which the government claims is sympathetic and inclusionary, being called unconstitutional and anti-Muslim, and triggering such powerful reactions?

Why Is Assam In Particular Seeing Such Strong Protests?

In Assam, what is primarily driving the protests is not who are excluded from the ambit of the new law, but how many are included. The protesters are worried about the prospect of the arrival of more migrants, irrespective of religion, in a state whose demography and politics have been defined by migration. The Assam Movement (1979-85) was built around migration from Bangladesh, which many Assamese fear will lead to their culture and language being overtaken, besides putting pressure on land resources and job opportunities. The protesters' argument is that the new law violates the Assam Accord of

1985, which sets March 24, 1971 as the cut-off for Indian citizenship. This is also the cut-off for the National Register of Citizens (NRC) in Assam, whose final version was published this year. Under the new law, the cut-off is December 31, 2014, for Hindus, Christians, Sikhs, Parsis, Buddhists and Jains from Pakistan, Bangladesh and Afghanistan. It has become controversial largely because it excludes Muslims.

Under the Earlier Law, How Could These Categories of People Apply for Indian Citizenship?

Under Article 6 the Constitution, a migrant from Pakistan (part of which is now Bangladesh) is to be granted citizenship if she entered India before July 19, 1948. In Assam, which has seen large-scale migration from East Pakistan (later Bangladesh), a migrant will get citizenship if she entered the state before the 1971 date mentioned in the Assam Accord. As far as illegal immigrants are concerned, India does not have a national policy on granting asylum or refugee status. The Home Ministry, however, has a standard operating procedure for dealing with foreign nationals who claim to be refugees. The government has dealt with refugees on a case-by-case basis by either granting them work permits or long-term visas. Significantly, there was no provision in the Citizenship Act to grant citizenship particularly to minorities or refugees till the latest amendment.

What Are the Citizenship Laws for Others?

Under the Citizenship Act, 1955, there are four ways to obtain citizenship.

Citizenship by Birth: In 1955, the law provided that anyone born in India on or after January 1, 1950 would be deemed a citizen by birth. This was later amended to limit citizenship by birth to those born between January 1, 1950 and January 1, 1987. It was amended again by the Citizenship Amendment Act, 2003; those born after December 3, 2004 will be deemed a citizen of India by birth if one parent is an Indian and the other is not an illegal immigrant. So, if one parent is an illegal immigrant, the child born after 2004 will have to acquire Indian citizenship through other means, not simply by birth. The law describes an illegal migrant as a foreigner who: (i) enters the country without valid travel documents, like a passport and visa, or (ii) enters with valid documents, but stays beyond the permitted time period.

Citizenship by Descent: A person born outside India and who has at least one Indian parent will be granted citizenship provided that the birth is registered within 1 year with the Indian consulate in the jurisdiction.

Citizenship by Registration: This is for persons related to an Indian citizen through marriage or ancestry.

Citizenship by Naturalisation: Section 6 of the Citizenship Act states a certificate of naturalisation can be granted to a person who is not an illegal immigrant and has resided in India continuously for 12 months before making an application. Additionally, in the 14 years before the 12-month period, the person must have lived in India for at least 11 years (relaxed to five years for the categories covered under the new amendment).

Waiver: If in the opinion of the central government, the applicant has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress

generally, it may waive all or any of the conditions in the Act. This is how the Dalai Lama or Adnan Sami, the Pakistani singer, were granted Indian citizenship.

How Many People Could Now Be Given Indian Citizenship Under the New Law?

Home Minister Amit Shah referred to the amendment as bringing relief to "lakhs and crores of non-Muslim refugees from Pakistan, Bangladesh and Afghanistan". As of December 31, 2014, the government had identified 2,89,394 "stateless persons in India", according to data presented in Parliament by the Home Ministry in 2016. The majority were from Bangladesh (1,03,817) and Sri Lanka (1,02,467), followed by Tibet (58,155), Myanmar (12,434), Pakistan (8,799) and Afghanistan (3,469). The figures are for stateless persons of all religions. For those who came after December 31, 2014, the regular route of seeking refuge in India will apply. If they are regarded as illegal immigrants, they cannot apply for citizenship through naturalisation, irrespective of religion.

Are the Communities Mentioned Indeed Persecuted in These Three Countries?

In Rajya Sabha, the Home Minister relied on news reports as evidence of religious persecution against Hindus in Pakistan, ranging from forced conversion to demolition of temples. Notable examples were Asia Bibi, a Pakistani Christian convicted of blasphemy who spent eight years on death row before being acquitted by the Pakistan Supreme Court. In Bangladesh, cases of killings of atheists by Islamic militants are well-documented. While Shah claimed that persecution has been rampant since the death Sheikh Mujibur Rehman, Bangladesh's present Foreign Affairs Minister A K Abdul Momen has denied any religious persecution. Although Shah referred to non-Muslim religions as persecuted minorities, the law avoids using the word persecution in its text.

What Exactly Is Debatable About the Law, Legally and Constitutionally?

Legal experts and Opposition leaders have argued that it violates the letter and spirit of the Constitution. One argument made in Parliament is that the law violates Article 14 that guarantees equal protection of laws. According to the legal test prescribed by courts, for a law to satisfy the conditions under Article 14, it has to first create a "reasonable class" of subjects that it seeks to govern under the law. Second, the legislation has to show a "rational nexus" between the subject and the object it seeks to achieve. Even if the classification is reasonable, any person who falls in that category has to be treated alike. If protecting the persecuted minorities is ostensibly the objective of the law, then the exclusion of some countries and using religion as a yardstick may fall foul of the test. Further, granting citizenship on the grounds of religion is seen to be against the secular nature of the Constitution which has been recognised as part of the basic structure that cannot be altered by Parliament. Shah argued that "persecuted minorities in three neighbouring countries, Pakistan, Bangladesh and Afghanistan, whose state religion is Islam", is a reasonable classification. Another argument is that the law does not account for other categories of migrants who may claim persecution in other countries.

Which Are These Other Categories?

The law will not extend to those persecuted in Myanmar (Rohingya Muslims) and Sri Lanka (Tamils). Shah has repeatedly made statements that not a single Rohingya Muslim will be allowed in India. Further, by not allowing Shia and Ahmadiyya Muslims who face persecution

in Pakistan, or the Hazras, Tajiks and Uzbeks who faced persecution by the Taliban in Afghanistan, the law is being seen as potentially violating Article 14. In Parliament, Shah argued that Muslims can never be persecuted in Islamic countries. Defending the exclusion of Shias and Ahmadiyyas from Pakistan, BJP MP Subramanian Swamy said a persecuted Shia would rather go to Iran than come to India. About Sri Lanka and Bhutan, Shah insisted that neither country has Islam as the state religion. Incidentally, both Bhutan and Sri Lanka offer constitutional patronage to the state religion, Buddhism.

Are These Persecuted Groups?

The Second Constitutional Amendment in Pakistan declared the Ahmadiyyas to be "non-Muslims" and their penal code makes it criminal for Ahmadis to refer to themselves as Muslims, and places restrictions on the community including denying it the right to vote. In 2016, the US Commission on International Religious Freedom recommended declaring Pakistan a tier-1 Country of Particular Concern for severe violations of religious freedom under the International Religious Freedom Act. In August this year, the US, the UK and Canada expressed concerns about religious oppression in China and Pakistan in a meeting on safety of religious minorities in armed conflict.

Given That the Law Excludes Only Non-Indian Muslims, Why Is It Being Said That It Is Against Indian Muslims?

On the face of it, the amendment is not to exclude any Indian citizen. However, the NRC in Assam and the latest citizenship law cannot be decoupled. The final NRC left out over 19 lakh people. The new law gives a fresh chance to the Bengali Hindus left out to acquire citizenship, whereas the same benefit will not be available to a Muslim left out, who will have to fight a legal battle. Shah and BJP leaders have maintained that the NRC process in Assam will be replicated in the rest of the country, fuelling fears among Indian Muslims. Plugged with NRC, the new amendment becomes an enabling law to potentially disenfranchise an individual of a religion not mentioned in the amendment. Politically, the law is expected to impact West Bengal and North-eastern states. Assam and West Bengal head for polls in 2021.

But If A Nationwide NRC Based on Documents Indeed Happens, Won't Many Hindus Also End Up Being Excluded?

Exclusion of Hindus is a possibility. However, the citizenship law can shield many such Hindus. Shah said in Parliament that no documents or proof of persecution will be asked of non-Muslim minorities when applying for citizenship. Congress leader Kapil Sibal said in Rajya Sabha that a Hindu left out of the NRC in Assam, and who will now apply under the new law, would effectively be lying. In the NRC process, an individual would have submitted an application that she is an Indian. Now, while applying for citizenship, she would have to submit that she fled Bangladesh, Afghanistan or Pakistan where she faced religious persecution. However, an exercise like the NRC, which cost approximately ₹12,000 crore in Assam alone and took years, will be mind-boggling for all of India in terms of scale and cost. Unlike Assam, where there was broad political and public consensus for NRC, a pan-India NRC is likely to be resisted by parties, governments, groups, and individuals.

Shah Said in Parliament That the Legislation Was Intended to Correct the Flaws of The Nehru-Liaquat Pact Of 1950. What Was This Agreement?

In the aftermath of Partition and the communal riots that followed, Prime Ministers Jawaharlal Nehru and Liaquat Ali Khan signed a treaty, also known as the Delhi Agreement, on security and rights of minorities in their respective countries. India had constitutional guarantees for rights of minorities and Pakistan had a similar provision in the Objectives Resolution adopted by its Constituent Assembly. Shah claims India has kept its end of the bargain while Pakistan has failed, and it is this wrong that the new law seeks to correct.

Kerala, West Bengal And Punjab Have Refused to Implement It. Can They?

The non-BJP ruling parties in these states are making a political point. Citizenship, aliens and naturalisation are subjects listed in List 1 of the Seventh Schedule and fall exclusively under the domain of Parliament. Most states of the Northeast are, however, wholly or partially exempted under special provisions for tribal areas, such as Inner Line Permit (Arunachal Pradesh, Nagaland, Mizoram and now extended to Manipur) and the Sixth Schedule with special provisions in practically all of Meghalaya, and a large chunk of Tripura.

How Much of Assam Is Exempt?

In Assam, three Autonomous Districts are exempted but the new law remains applicable to the major area. This also raises the question: can there be two citizenship laws applicable to the same state? Under Clause 5.8 of the Assam Accord, "Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected, deleted and practical steps shall be taken to expel such foreigners."

What Is the Assam Accord and How Did It Lead to the NRC?

It was signed on August 15, 1985 by the Governments of India and Assam, and the All Assam Students' Union and the All Assam Gana Sangram Parishad in New Delhi. It came at the end of a six-year mass movement, spearheaded by students, against illegal migration from East Pakistan/Bangladesh. The process of identifying foreigners was laid down in the Illegal Migrants (Determination by Tribunals) Act of 1983, applicable only to Assam. In 2005, it was struck down by the Supreme Court as unconstitutional. The petitioner, Sarbananda Sonowal (now Assam Chief Minister), had argued that the provisions were so stringent that it virtually made "detection and deportation of illegal migrants almost impossible". The present NRC (an update of the existing NRC of 1951) began in 2013. On a litigation by NGO Assam Public Works seeking removal of names of illegal immigrants from the voters list, the Supreme Court relied on two rulings on cases filed by Sonowal, and justified its intervention to update the NRC. The process was monitored by the Supreme Court.

The Home Minister Assured That Assam's Culture Would Be Protected Under Clause 6 Of the Assam Accord. What Is It About?

This was added to the Assam Accord as a balancing factor. While the citizenship cut-off date for a migrant from Pakistan for the rest of the country was July 19, 1948 (before the amendment), for Assam it was set at March 24, 1971. Because of the additional migration, Clause 6 promised that "Constitutional, legislative and administrative safeguards, as may be appropriate shall be provided to protect, preserve and promote the culture, social, linguistic identity and heritage of the Assamese people." This protection is covered under Section 6A

of the Citizenship Act, which created "special provisions as to citizenship of persons covered by the Assam Accord." The constitutional validity of Section 6A is under challenge before the Supreme Court. It has not yet been defined who will be listed as the "Assamese people". A widely held view is that it should cover those who could trace their ancestry in Assam back to at least 1951, excluding citizens who came during 1951-71. A committee set up by the Centre is yet to make recommendations on what form the special provisions would take — land rights, political rights, cultural preservation.

- In Assam, for example, observers say the division between the Assamese-speaking Brahmaputra Valley and the Bengali-speaking Barak Valley is likely to deepen; and that relations between tribals and the Bengali-speaking majority in Tripura will suffer. The rules of CAA under which Hindu and other minorities may get amnesty have not yet been specified.
- According to Census 2011, Assam has a population of 3.12 crore, with 61.47% Hindus, and 34.22 % Muslims. Around 12.44% of the population is tribal, comprising Bodos and others. Tribal States of the Northeast have got protection from the CAA with the ILP system, unlike Assam.

What About Protection Under the Sixth Schedule?

The CAA, 2019, while inserting a new sub-section 6B, listing out the provisions to grant citizenship rights to Hindu and other non-Muslim minorities of three countries, says "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 Inner Line' notified under the Bengal Eastern Frontier Regulation, 1873". The Sixth Schedule allows constitution of autonomous district councils in tribal areas: of Assam (three), Meghalaya (three), Mizoram (three) and Tripura (one) — 10 in all in the Northeast. Thus, in Assam, there are the Karbi Anglong Autonomous Council (for the Karbi Anglong District), the Dima Hasao Autonomous Council (for the Dima Hasao or the erstwhile North Cachar Hills District) and the Bodoland Territorial Council (The Bodoland Territorial Areas District). These regions are exempt from the purview of the Act.

How Does the Inner Line Permit Help?

As Home Minister Amit Shah met political and civil society groups from the region, one of the suggestions that came up was to expand the ILP system. The ILP regulates the visit of outsiders to States under the Bengal Eastern Frontier Regulation, 1873. It was in force in three north-eastern States, Arunachal Pradesh, Mizoram and Nagaland, but on Wednesday, Manipur too came under the ILP regime, a demand of the Bharatiya Janata Party (BJP)-led government of the State. The ILP was withdrawn from Manipur in 1950. The State government's attempts to reintroduce it through three bills led to violent protests by tribals in 2015. [When the bills were passed in August 2015, it pleased the Hindu Meitei community, indigenous to the State, because it would restrict entry of 'outsiders' under the new ILP-like laws and define who can claim to be from Manipur with 1951 as a cutoff date, but the tribals, mainly the Kukis and Nagas who live in the hill districts, erupted in anger. The tribals felt that the bills would allow Meiteis to buy land in tribal districts – these areas have some protection under Article 371C but are not under the Sixth Schedule unlike other tribal areas of the Northeast barring Nagaland, which is covered under ILP. Manipur's tribals were also upset with the cutoff year as they felt those who moved to the State post 1951 would lose out.] Chief Minister N. Biren Singh mooted the idea again in 2018 and one of the bills, the Manipur People's Protection Bill, was passed after consultations with all stakeholders including tribals.

The bill, which is awaiting the President's approval, sought to introduce a system similar to the ILP, regulating the entry of outsiders. After the Centre extended ILP to the State, Mr Singh said its implementation would protect the indigenous people of the State. But there's still some uneasiness between the valley's Meiteis and the hills' tribals. Manipur has a population of 28.56 lakh, according to the 2011 Census, with 41.39% Hindus and 41.29% Christians and a host of tribes including the Tangkhul Nagas and Kukis. In Nagaland too, Dimapur, the commercial hub of the State which had been outside the ILP, was brought under its purview. Dimapur has a large population of non-tribals. The Nagaland government notification says that every non-indigenous person who settled or entered Dimapur on or after November 21, 1979, will have to obtain an ILP within 90 days. Now that Dimapur too has become a "tribal belt", all 12 districts of Nagaland are under ILP. As the National Register of Citizens was being updated in Assam last year, the Nagaland Tribes Council, Tribal Hohos and a group of civil organisations petitioned the State government to seek changes in the colonial era law (Bengal Eastern Frontier Regulation 1873) to bring the entire State under ILP to protect the "indigenous people" from outsiders, including "illegal migrants" from Bangladesh. Around 19 lakh people have been left out of the final NRC list and have to prove their citizenship in Assam's foreigners' tribunals.

Why Are Tripura And Meghalaya Rattled?

After the passage of the Bill, Mr. Shah met delegations of the Indigenous People's Front of Tripura, which is an ally of the BJP in the State, and Tripura's royal family head, Kirit Pradyot Deb Barman, who later tweeted: "Told him [Shah] we are going to SC [Supreme Court] against CAB as we cannot compromise! No retreat no surrender!" Around 32% of the people of Tripura, which has a population of about 36 lakhs, are tribal. In 2015, after insurgency appeared to have waned, the Tripura government revoked the Armed Forces (Special Powers) Act, or AFSPA. The AFSPA, which had been in force in the State since 1997, was repealed after elections to the Tripura Tribal Areas Autonomous District Council. It had been a long-standing demand of tribal parties such as the Indigenous Nationalist Party of Tripura and the Indigenous Peoples Front of Tripura. After the Citizenship (Amendment) Bill was passed, protests broke out in at least four districts, shattering years of peace. Journalist Patricia Mukhim wrote in the Mint: "The state has been overrun by migrants, first from East Pakistan and later from Bangladesh. Now, the Bengali-speaking population is a majority in Tripura and runs the affairs of the state. Fears of a similar fate are real and widely held across all states in the region." Most of Meghalaya is protected from CAB because of the Sixth Schedule — some areas of capital Shillong, however, fall outside its purview. But there is a demand to extend ILP to the State. Protesters want the Governor, Tathagata Roy, to give his nod to a proposed ordinance that seeks mandatory registration of outsiders entering the State. There were protests against Tura MP, Agatha Sangma (daughter of P.A. Sangma and sister of Chief Minister Conrad Sangma), who voted in favour of the CAB for the National People's Party, an NDA ally.

Destruction of Public Property

➔ While agreeing to hear petitions on alleged police excesses on students in Jamia Millia Islamia and Aligarh Muslim University, a Supreme Court Bench headed by Chief Justice of India S A Bobde on Monday expressed displeasure over rioting and destruction of public property. The CJI said the protesters were free to take to the streets, but if they did, they would not be heard

by the court. Despite a law against the destruction of property, incidents of rioting, vandalism, and arson have been common during protests across the country.

What the Law Says

The Prevention of Damage to Public Property Act, 1984 punishes anyone "who commits mischief by doing any act in respect of any public property" with a jail term of up to five years and a fine or both. Provisions of this law can be coupled with those under the Indian Penal Code. Public property under this Act includes "any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy; any oil installation; any sewage works; any mine or factory; any means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith". However, the Supreme Court has on several earlier occasions found the law inadequate, and has attempted to fill the gaps through guidelines. In 2007, the court took suo motu cognizance of "various instances where there was large scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like", and set up two Committees headed by former apex court judge Justice K T Thomas and senior advocate Fali Nariman to suggest changes to the law. In 2009, in the case of In Re: Destruction of Public & Private Properties v State of AP and Ors, the Supreme Court issued guidelines based on the recommendations of the two expert Committees.

What the SC Said

The Thomas Committee recommended reversing the burden of proof against protesters. Accepting the suggestion, the court said that the prosecution should be required to prove that public property had been damaged in direct action called by an organisation, and that the accused also participated in such direct action. "From that stage the burden can be shifted to the accused to prove his innocence," the court said. It added that the law must be amended to give the court the power to draw a presumption that the accused is guilty of destroying public property, and it would then be open to the accused to rebut such presumption. Such a reversal of the burden of proof is applicable in cases of sexual violence, among others. Generally, the law presumes that the accused is innocent until the prosecution proves its case. The Nariman Committee's recommendations dealt with extracting damages for destruction. Accepting the recommendations, the court said the rioters would be made strictly liable for the damage, and compensation would be collected to "make good" the damage. "Where persons, whether jointly or otherwise, are part of a protest which turns violent, results in damage to private or public property, the persons who have caused the damage, or were part of the protest or who have organized it will be deemed to be strictly liable for the damage so caused, which may be assessed by the ordinary courts or by any special procedure created to enforce the right," the court said. Apart from holding rioters liable and imposing costs, the court also issued guidelines including directing High Courts to order Suo motu action, and to set up a machinery to investigate the damage caused and award compensation wherever mass destruction to property takes place due to protests.

Impact of Guidelines

Like the law, the guidelines too, have had a limited impact. This is because the identification of protesters remains difficult, especially in cases where there is no leader who gave the call to protest. Following the Patidar agitation in 2015, Hardik Patel was charged with sedition for inciting violence that led to loss of life and property; however, Patel's lawyers argued in

Supreme Court that since there was no evidence that he had called for violence, he could not be held liable for loss of property. In 2017, a petitioner who claimed he was forced to spend more than 12 hours on the road on account of an ongoing agitation, moved the Supreme Court seeking implementation of the 2009 guidelines. In its verdict in Koshy Jacob vs Union Of India, the court reiterated that the law needed to be updated — but it did not grant the petitioner any compensation since the organisers of the protest were not before the court.

Net Loss

➔ The shutting down of the Internet in Delhi and several States as a response to growing protests against the Citizenship (Amendment) Act (CAA), 2019, is unsophisticated and deeply damaging to social life and the economy. Meghalaya, Tripura and Arunachal Pradesh were entirely cut off, and parts of Assam, West Bengal, Karnataka and Uttar Pradesh were deprived of Internet access, in clumsy attempts to quell demonstrations. Such ham-handed interventions have won for India a place at the head of the table among intolerant countries that routinely shut down the Internet to block criticism of the government. Jammu and Kashmir is now acknowledged globally as a dark spot on the Internet, with service there blocked since August 4. After protests against the CAA began, other States are also experiencing shutdowns, and the fate of connectivity is being decided by officers empowered by the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 under the Indian Telegraph Act, 1885, or Section 144 of the Code of Criminal Procedure. A disruption is an extreme measure, and should be countenanced only for a specific threat, and as an interim measure as official communications fill the information vacuum. A case in point is the spreading of rumours on child lifters on social media, which resulted in several lynchings. The net blackout of the kind being witnessed now, however, has little to do with rumours, and is clearly aimed at muzzling the protests. The Prime Minister, who has fashioned himself as a digital first leader, issued a Twitter appeal to people in Assam on the CAA, but they did not get it as they had no net. The NDA government should also be aware that the connectivity chokehold applied on J&K is proving lethal to entrepreneurship, crippling a new generation running start-ups and promoting women's employment. A disrupted Internet is dealing a blow to digital financial transactions across several States, to e-governance initiatives, and economic productivity. It affects education and skill-building, as the Kerala High Court affirmed in an order holding access to the net a fundamental right that could not be denied arbitrarily. The court pointed out that the apprehension of a gadget being misused is not a legitimate ground for denial of service, and the government should act on specific complaints. Yet, since 2015, shutdowns have been rising — 134 in 2018 — and the NDA seems unwilling to change course. It seems to matter little that blunt interventions make the ambitious goal of growing into a $5-trillion economy even more unrealistic, or that India is losing face as a democracy because it chooses to sit with authoritarian regimes. That is the wrong road to take. Reform and progress vitally need the net.

Section 144, A Vestige of Colonial Rule

➔ As protesters against the Citizenship Amendment Act hit the streets in large numbers in several states on December 19, state governments sought to tamp down on the demonstrations by issuing prohibitory orders under Section 144 of the Code Of Criminal Procedure (CrPC), 1973. Section 144 was imposed in Bengaluru for three days, while the entire state of Uttar Pradesh remains under this provision.

What is Section 144?

Section 144 CrPC, a law retained from the colonial era, empowers a district magistrate, a sub-divisional magistrate or any other executive magistrate specially empowered by the state government in this behalf to issue orders to prevent and address urgent cases of apprehended danger or nuisance. The magistrate has to pass a written order which may be directed against a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area. In emergency cases, the magistrate can pass these orders without prior notice to the individual against whom the order is directed.

What Powers Does the Administration Have Under the Provision?

The magistrate can direct any person to abstain from a certain act or to take a certain order with respect to certain property in his possession or under his management. This usually includes restrictions on movement, carrying arms and from assembling unlawfully. It is generally believed that assembly of three or more people is prohibited under Section 144. However, it can be used to restrict even a single individual. Such an order is passed when the magistrate considers that it is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, of an affray. However, no order passed under Section 144 can remain in force for more than two months from the date of the order, unless the state government considers it necessary. Even then, the total period cannot extend to more than six months.

Why Is the Use of Power Under Section 144 Criticised So Often?

The criticism is that it is too broad and the words of the section are wide enough to give absolute power to a magistrate that may be exercised unjustifiably. The immediate remedy against such an order is a revision application to the magistrate himself. An aggrieved individual can approach the High Court by filing a writ petition if his fundamental rights are at stake. However, fears exist that before the High Court intervenes, the rights could already have been infringed. Imposition of Section 144 to an entire state, as in UP, has also drawn criticism since the security situation differs from area to area.

How Have Courts Ruled on Section 144?

In Re: Ardeshir Phirozshaw ... vs Unknown (1939), a British judge of the Bombay High Court censured the Chief Presidency Magistrate in Bombay for passing an illegal order under Section 144: "A Magistrate acting under Section 144 may no doubt restrict liberty. But he should only do so if the facts clearly make such restriction necessary in the public interest, and he should not impose any restriction which goes beyond the requirements of the case." The judge criticised application of power under Section 144 for two months, "not only to the particular riot, but to any past riots and any future riots which may take place within the next two months are strong measures and; require cogent facts to justify them". The first major challenge to the law was made in 1961 in Babulal Parate vs State of Maharashtra and Others. A five-judge Bench of the Supreme Court refused to strike down the law, saying it is "not correct to say that the remedy of a person aggrieved by an order under the section was illusory". It was challenged again by Dr Ram Manohar Lohiya in 1967 and was once again rejected, with the court saying "no democracy can exist if 'public order' is freely allowed to

be disturbed by a section of the citizens". In another challenge in 1970 (Madhu Limaye vs Sub-Divisional Magistrate), a seven-judge Bench headed by then Chief Justice of India M Hidayatullah said the power of a magistrate under Section 144 "is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny". The court, however, upheld the constitutionality of the law. It ruled that the restrictions imposed through Section 144 cannot be held to be violative of the right to freedom of speech and expression, which is a fundamental right because it falls under the "reasonable restrictions" under Article 19(2) of the Constitution. The fact that the "law may be abused" is no reason to strike it down, the court said. "Occasions may arise when it is not possible to distinguish between those whose conduct must be controlled and those whose conduct is clear. A general order may be necessary when the number of persons is so large that the distinction between them and the general public cannot be made," the court said, justifying blanket prohibitory orders passed under Section 144. In 2012, the Supreme Court came down heavily on the government for imposing Section 144 against a sleeping crowd in Ramlila Maidan. "Such a provision can be used only in grave circumstances for maintenance of public peace. The efficacy of the provision is to prevent some harmful occurrence immediately. Therefore, the emergency must be sudden and the consequences sufficiently grave," the court said.

Does Section 144 Provide for Communications Blockades Too?

The rules for suspending telecommunication services, which include voice, mobile internet, SMS, landline, fixed broadband, etc, are the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. These Rules derive their powers from the Indian Telegraph Act of 1885, Section 5(2) of which talks about interception of messages in the "interests of the sovereignty and integrity of India". However, shutdowns in India are not always under the rules laid down, which come with safeguards and procedures. Section 144 CrPC has often been used to clamp down on telecommunication services and order Internet shutdowns. In Sambhal, UP, Internet services were suspended by the District Magistrate under Section 144. In West Bengal on June 20, 2019, mobile internet, cable services, broadband were shut down by the District Magistrate in North 24-Parganas under Section 144 over communal tensions.

Under What Provisions Were Telecom Services Interrupted in Parts of Delhi?

In Delhi on Thursday, the Deputy Commissioner of Police, Special Cell, issued an order to the nodal officers of telecom operators including Airtel, Reliance Jio etc to interrupt services in specific areas. "No specific legal reason has been cited for this. Police cannot issue these directions because they are not the proper authorities to permit internet shutdown. In Delhi's case since it is a Union Territory, it would have to be authorised by the Home Ministry itself," Apar Gupta, Executive Director at Internet Freedom Foundation told. Under the 2017 Rules, directions to "suspend the telecom services shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of Government of India or by the Secretary to the State Government in-charge of the Home Department in the case of a State Government (hereinafter referred to as the competent authority)..." The Rules also say that in case the confirmation does not come from a competent authority, the orders shall cease to exist within a period of 24 hours. Clear reasons for such orders need to be given in written, and need to be forwarded to a Review Committee by the next working day.

Why NPR isn't NRC, and Yet...

➔ The Union Cabinet approved over ₹3,900 crore for a National Population Register (NPR). Coming in the backdrop of nationwide protests over the Citizenship Amendment Act (CAA) and the proposed all-India National Register of Citizens (NRC), the NPR is being seen by many as the first step towards the NRC, while the Centre has sought to delink the two. The governments of Kerala and West Bengal have already announced that they will not implement NPR.

What is NPR?

The NPR is a list of "usual residents of the country". According to the Home Ministry, a "usual resident of the country" is one who has been residing in a local area for at least the last six months or intends to stay in a particular location for the next six months. NPR is not a citizenship enumeration drive, as it would record even a foreign national staying in a locality for more than six months. This makes NPR different from the NRC, which includes only Indian citizens while seeking to identify and exclude non-citizens.

How Do I Get Enrolled In NPR?

The NPR is being prepared under provisions of the Citizenship Act, 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003. It is mandatory for every "usual resident of India" to register in the NPR. Only Assam will not be included (as per a notification by the Registrar General of India in August), given the recently completed NRC in that state. NPR will be conducted in conjunction with the house-listing phase, the first phase of the Census, by the Office of Registrar General of India (RGI) for Census 2021. It is conducted at the local, sub-district, district, state and national levels. The RGI has already begun a pilot project in 1,200 villages and 40 towns and cities through 5,218 enumeration blocks where it is collecting various data from people. The final enumeration will begin in April 2020 and end in September 2020.

Is NPR Connected to NRC?

The Citizenship Act empowers the government to compulsorily register every citizen and maintain a National Register of Indian Citizens. A nationwide NRC — if undertaken — would flow out of NPR. This does not necessarily mean that an NRC must follow NPR — no such register was compiled after the previous NPR in 2010. After a list of residents is created, a nationwide NRC — if it happens — could go about verifying the citizens from that list. The Home Ministry issued a statement saying, "There is no proposal at present to conduct a nationwide NRC based on the NPR data." Home Minister Amit Shah too said in an interview to ANI that the two were not connected and that NPR data would not be used for NRC. Earlier, Shah had said several times that there would be an NRC across the country and even repeated in Assam. Statements linking the NPR and NRC have been made by the government in Parliament and the Home Ministry's latest annual report. In November 2014, then Minister of State for Home Kiren Rijiju had told Rajya Sabha, in a written reply to CPI MP Dr T N Seema: "The NPR is the first step towards creation of National Register of Indian Citizens (NRIC) by verifying the citizenship status of every usual residents." The 2018-19 Annual Report of the Home Ministry also says the NPR is the first step towards implementation of the NRC.

What Else Makes NPR Controversial?

Another debate has been about privacy. The NPR intends to collect many details of personal data on residents. The NPR is among a host of identity databases such as Aadhaar, voter card, passport and more that Home Minister Shah said he would like to see combined into one card. "We will have to end all these separate exercises," Shah said at the foundation stone laying ceremony for the new Office of Registrar General of India and Census Commissioner on September 24.

If There Was A Previous NPR, How and When Did the Idea Originate?

The first such project dates back to the UPA regime and was put in motion by then Home Minister P Chidambaram in 2009. At that time, it had clashed with Aadhaar (UIDAI) over which project would be best suited for transferring government benefits to citizens. The Home Ministry then pushed NPR as a better vehicle because it connected every NPR-recorded resident to a household through the Census. The ministry push even put the UIDAI project on the back-burner. The data for NPR was first collected in 2010 along with the house-listing phase of Census 2011. In 2015, this data was updated by conducting door-to-door surveys. However, with the NDA government picking out Aadhaar as the key vehicle for transfer of government benefits in 2016 and putting its weight behind it, NPR took a backseat. It was through a notification on August 3 by the RGI that the idea has been revived. The exercise to update the 2015 NPR with additional data has begun. Digitisation of updated information has been completed.

What Kind of Data Will Be Collected?

The NPR will collect both demographic data and biometric data, although for the latter it will depend upon Aadhaar. In the last NPR in 2010, data were collected on 15 aspects; in the 2020 NPR, there are 21 data points. Again, three of the data points from 2010 (father's name; mother's name; spouse's name) have been clubbed into one in the 2020 exercise, so that, in effect, there are eight new data points, including the contentious "date & place of birth of parents":

- Aadhaar Number (voluntary)
- Mobile Number
- Date & Place of Birth of Parents
- Place of Last Residence
- Passport Number (if Indian passport holder)
- Voter ID Card Number
- Permanent Account Number
- Driving Licence Number

In the test, the RGI is seeking these details and working to update the Civil Registration System of birth and death certificates.

What If One Does Not Have Such Details?

According to Home Ministry sources, while registering with NPR is mandatory, furnishing of additional data such as PAN, Aadhaar, driving licence and voter ID is voluntary. "We are reposing trust on citizens," Union minister Prakash Javadekar said on Tuesday while announcing the Cabinet decision. The ministry has also floated the option of residents updating details for NPR online.

Why Does the Government Want So Much Data?

While there are concerns about privacy, the government position is based on two grounds. One is that every country must have a comprehensive identity database of its residents with demographic details. In its statement issued after Cabinet approval to NPR, the Home Ministry said the objective of conducting NPR is to "prepare a credible register of every family and individual" living in the country apart from "strengthening security" and "improvement in targeting of beneficiaries under various Central government schemes". The second ground, largely to justify the collection of data such as driving licence, voter ID and PAN, is that it will ease the life of those residing in India by cutting red tape. "It is common to find different dates of birth of a person on different government documents. NPR will help eliminate that. With NPR data, residents will not have to furnish various proofs of age, address and other details in official work. It would also eliminate duplication in voter lists," an official said. Officials, however, insist that NPR information is confidential, meaning it will not be shared with third parties. There is as yet no clarity on the mechanism for protection of this vast amount of data that the government plans to collect.

What Does One Make of The Defiance of West Bengal And Kerala?

These Opposition-ruled states are making a political point. Citizenship, aliens and naturalisation are subject matters listed in List 1 of the Seventh Schedule that fall exclusively under the domain of Parliament. Legally, the states have no say in implementing or ruling out NPR. However, given that the manpower is drawn from the states, the defiance could potentially result in a showdown.

The Widening Fissure in India's Rule of Law (Gautam Bhatia - Delhi-Based Lawyer)

➔ Last month, the news website Scroll revealed that more than 10,000 people in the Khunti district of Jharkhand had been charge sheeted by the police for sedition. These people are overwhelmingly Adivasis. Then, in early December, a judicial probe completed a seven-year long investigation, finding that a so-called encounter of "Maoists" in Chhattisgarh by security forces, in 2012, had been a "fake encounter" all along. The people killed had not been Maoists, but innocent villagers. These two incidents from central India — separated by time, but united in their character — illustrate a gaping tear in the fabric of constitutionalism and the rule of law in India. Put simply, even after seven decades of Independence, the relationship between the individual and the state is marked by a deep and pervasive imbalance of power. In ways that are strikingly similar to those employed by its colonial predecessor, the Indian state retains a range of legal — and extra-legal — weapons, which it can turn against its own people with minimal scrutiny or accountability. While these weapons remain sheathed in large parts of the country, it is in places like Jharkhand and Chhattisgarh, where there exists an intense conflict over land and resources, and serious challenges to the legitimacy of the state, that their ugly reality is revealed for all to see.

Sedition, A Grey Area

Khunti's sedition cases go back to 2017, and the start of the "Pathalgadi movement". Adivasis who were faced with corporate takeover of their land resorted to an innovative form of protest: they began to carve provisions of the Indian Constitution's Fifth Schedule — that guarantees tribal autonomy — upon stone slabs, placed upon the boundaries of the village. The first information reports (FIRs) that follow allege that the police were attacked with

"sticks and traditional weapons" (an allegation that the Adivasis dispute); but additionally, the FIRs also state that the leaders of the movement have been "misleading the innocent people in the name of scheduled areas", and "erecting stone slabs presenting wrong interpretation of the Constitution". As a result of these FIRs, individuals spent many months in jail. The ongoing events in Khunti reveal multiple fault lines in the legal system, and multiple faults in those who implement it. A century-and-a-half after it was first enacted into the Indian Penal Code by the colonial government, the vague, ambiguous, and unclear wording of the sedition provision continues to make it ripe for abuse. Sedition is defined as "disaffection" against the government, or bringing it into "hatred or contempt". It should be immediately obvious that the scope of these words is boundless, and boundlessly manipulability. However, when the sedition law was challenged in 1962, the Supreme Court of India chose to uphold it, while claiming to "narrow it down". The court noted that only acts that had a "tendency" to cause public disorder would fall within the scope of the section.

Tool of Oppression

As the years since that judgment have shown, however, this dictum had no impact whatsoever on the abuse of the sedition law. To start with "tendency to cause public disorder" was almost as vague as the text or the original section. Second, as long as the section continued to exist in the form that it did, the police could, and did continue to invoke it to stifle protest and dissent; and trial courts could and did continue to refuse bail to jailed people. The failure, thus, extended to every wing of the state: to Parliament, for allowing the provision to remain on the statute books, to the Supreme Court for not striking it down when it had the chance, to State governments and State police, that have found in it a ready tool of oppression, and to lower courts, that enable prolonged incarceration of people under the section. The playbook of the sedition law has, of course, been replicated elsewhere, in postcolonial legislation. The Unlawful Activities (Prevention) Act, or UAPA, for example, contains language that is as wide and vague, criminalising "membership" of terrorist gangs or unlawful organisations, without any explanation of what "membership" means. Under these provisions, journalists, activists, and human rights lawyers allegedly associated with events at Bhima Koregaon in 2018, were arrested later that year, and still remain in jail without a trial. They have been denied bail by both the trial court and the High Court, raising once again the spectre of many years of imprisonment without any finding of guilt. There could be no easier way of silencing the voices of dissent.

Fake Encounters

The Chhattisgarh issue, on the other hand, is a mirror image: from alleged individual violence against the state, we turn 180 degrees to state violence against citizens. The problem of "fake encounters", which has long dogged the Indian polity, was thrown into sharp relief when the Telangana police "encountered" four people accused of a brutal rape and murder in the early hours of December 6. It hardly needs to be said that "encounters" — and "fake encounters" — take place because there do not exist adequate structures of accountability. Without those structures, the police effectively operate in a zone of impunity. In 2009, the then High Court of Andhra Pradesh passed a landmark judgment, in which it attempted to create a regime of accountability. Central to this regime was the requirement that encounter deaths would be investigated as if they were murder cases. A FIR would have to be registered against the police officers responsible for the encounter, and to the extent that they invoked self-defence they would have to prove it. The High Court's judgment, however, was stayed by the Supreme

Court, which then passed a series of vague and unclear guidelines a few years later, on the same subject. Even this regime, however, was given a go-by in the recent Telangana encounter case, where, acting on a public interest litigation, the Supreme Court stayed all pending proceedings (including before the Telangana High Court, which was following the guidelines), and handed over the investigation to a "committee", with a six-month reporting period, to boot. As the Chhattisgarh case shows, however, these committee-led investigations take years to complete, and even at the end of the process, the outcome remains unclear. Here again, then, an attempt at mitigating the stark imbalance of power between the state and the citizen, in a particularly violent and abusive context, has been progressively diluted. The Jharkhand and Chhattisgarh incidents show that the rule of law and the Constitution continue to fail those who need it the most, and in the places where it is needed the most. And the root cause of this failure is the active complicity of the very actors who we most expect to maintain the rule of law: clearly, abusive laws are enacted by Parliament, upheld by courts, misused by the police, and sanctioned (again) by courts. To break this seemingly unending cycle, it is important to understand that its root cause lies in how laws such as the sedition provision, the UAPA, and many others, systematically concentrate power in the hands of state agencies, and equally systematically, strip individuals and communities of legal ways to resist (the UAPA, for example, prohibits judges from granting bail if the police makes out a "prima facie" case against the accused). In our recent history, on the other hand, we also have had examples of laws that have done the opposite: both the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, or FRA, and the Right to Information (RTI) Act, for example, have rebalanced the relationship between the individual and the state in important domains. If we are to ever fulfil the promises of freedom and equality that the Constitution of India guarantees to all, we must learn from the social movements that gave birth to the RTI and the FRA, and organise in similar ways against laws such as sedition and the UAPA.

Unfulfilled Promise

➔ India's Personal Data Protection Bill, 2019 starts encouragingly, seeking to protect "the privacy of individuals relating to their personal data". But by the end, it is clear it is not designed to deliver on the promise. For, even as it rightly requires handlers of data to abide by globally-accepted rules — about getting an individual's consent first — it disappointingly gives wide powers to the Government to dilute any of these provisions for its agencies. The Bill, which was tabled in Parliament by the Electronics and IT Minister on December 11, has now been referred to a joint committee, to be headed by the BJP's Meenakshi Lekhi. The committee is expected to table its report during the Budget session. Technically, therefore, this is not beyond redemption yet. But recent events have cast doubts about whether the Government is serious about delivering on the privacy promise. Recently, messaging platform WhatsApp said that some Indian journalists and rights activists were among those spied using technology by an Israeli company, which by its own admission only works for government agencies across the world. Google too had alerted 12,000 users, including 500 in India, regarding "government-backed" phishing attempts against them. The Indian Government has still not come out in the clear convincingly regarding these incidents. Importantly, one of the first to raise a red flag about the Bill's problematic clauses was Justice B.N. Srikrishna, whose committee's report forms the basis of the Bill. He has used words such as "Orwellian" and "Big Brother" in reaction to the removal of safeguards for Government agencies. In its report last July, the committee noted that the dangers to privacy originate

from state and non-state actors. It, therefore, called for exemptions to be "watertight", "narrow", and available for use in "limited circumstances". It had also recommended that the Government bring in a law for the oversight of intelligence-gathering activities, the means by which non-consensual processing of data takes place. A related concern about the Bill is regarding the constitution of the Data Protection Authority of India, which is to monitor and enforce the provisions of the Act. It will be headed by a chairperson and have not more than six whole-time members, all of whom are to be selected by a panel filled with Government nominees. This completely disregards the fact that Government agencies are also regulated under the Act; they are major collectors and processors of data themselves. The sweeping powers the Bill gives to the Government renders meaningless the gains from the landmark K.S. Puttaswamy vs. Union of India case, which culminated in the recognition that privacy is intrinsic to life and liberty, and therefore a basic right. That idea of privacy is certainly not reflected in the Bill in its current form.

The Story of Faiz's Hum Dekhenge — From Pakistan To India

➔ A professor at IIT-Kanpur alleged that students protesting on campus against the police action in Delhi's Jamia Millia Islamia were "spreading hate against India". The complaint was provoked by the use by students of a couple of lines from the late Pakistani poet Faiz Ahmad Faiz's poem Hum Dekhenge.

The Poet and His Poem

Faiz's poem, Wa-yabqa-wajh-o-rabbik, a Quranic verse from Surah Rahman meaning, literally, 'The face of your Lord', is popularly known by its refrain, "Hum Dekhenge". In South Asia, the mythology around the poem and one particular rendition by the Pakistani ghazal singer Iqbal Bano (an audio recording is available on YouTube) is embellished by every new protest, which recalls the revolutionary verse. Faiz was a communist who employed traditional religious imagery to attack political structures in his quest for revolution. In Hum Dekhenge, the description of Qayamat, the Day of Reckoning, is transformed sharply into the communist day of revolution. The religious symbolism in the poem, which was written in 1979, is to be read in the context of Pakistan under the military dictator General Zia-ul-Haq. Zia had deposed Prime Minister Zulfikar Ali Bhutto in a coup in 1977, and declared himself President of Pakistan in September 1978. Zia's dictatorship soon took a powerful religious turn, and he used conservative Islam as an authoritarian and repressive tool to tighten his grip over the country. In Hum Dekhenge, Faiz called out Zia — a worshipper of power and not a believer in Allah — merging the imagery of faith with revolution. Hum Dekhenge was censored, with one verse being permanently excised, even from Faiz's complete works, Nuskha-e-Ha-e-Wafa. A Coke Studio performance of the poem last year omitted what is arguably the most revolutionary part of the poem: "Jab arz-e-Khuda ke Ka'abe se, sab buutt uthwaae jaayenge / Hum ahl-e-safa mardood-e-haram, masnad pe bithaaye jaayenge / Sab taaj uchhale jaayenge, sab takht giraaye jaayenge", roughly translated as "From the abode of God, when the icons of falsehood will be removed / When we, the faithful, who have been barred from sacred places, will be seated on a high pedestal / When crowns will be tossed, when thrones will be brought down".

The Singer and The Context

Hum Dekhenge was a powerful and popular poem, but it assumed iconic status and became a universal anthem of protest and hope after it was rendered by Iqbal Bano in 1986, and live recordings of that performance were smuggled out of Pakistan. That performance inextricably linked her voice and rendition with the poem — indeed, it was Iqbal Bano who made Faiz's revolutionary nazm immortal. The most authentic description of that performance — at Lahore's Alhamra Arts Council on February 13, 1986 — comes from Faiz's grandson, Ali Madeeh Hashmi. Faiz had passed away in November 1984, and the occasion was the 'Faiz Mela' organized on his birthday by the Faiz Foundation. The open air mela would be held in the day and, in the evening, there would be a concert. The 1986 concert was given by Iqbal Bano. Hashmi recounts that the hall — with a capacity of either 400 or 600 — was full even before she came on stage. (From Hashmi's account, it appears that the popular story of 50,000 people being in the audience is untrue.) There was commotion after all seats were taken, so the doors were opened and people streamed in, packing the hall completely. Iqbal Bano sang several of Faiz's poems, and Hum Dekhenge received the loudest cheers. She finished the concert, but the audience refused to let her leave, begging for an encore of Hum Dekhenge. She obliged, and a technician in Alhamra surreptitiously recorded the encore — this is the recording that survives today. The clapping and cheers were so thunderous, Hashmi says, that it felt at times that the roof of Alhamra hall would be blown off. Iqbal Bano had to stop repeatedly to allow the cheers and slogans of "Inquilab Zindabad" to subside before she could carry on singing. The applause was the wildest for the verse "Sab taaj uchhale jaayenge, sab takht giraaye jaayenge".

After the Concert Ended

The poet Gauhar Raza has written of a Pakistani friend who attended the concert. Raza's friend had received a late-night call from someone he knew well in the Pakistani armed forces. The caller advised Raza's friend to not stay at home for the next two or three days. He took the advice, and in the days that followed, many of those who were present at the Lahore auditorium were questioned, and some were detained. His home was visited in the middle of the night by the military police. Many copies of Iqbal Bano's rendition were confiscated and destroyed. An uncle of Hashmi's had managed to get hold of one copy — which he handed over to friends who smuggled it out to Dubai, where it was copied and widely distributed. Before leading a mass singing of "We shall overcome" in Atlanta in 1967, the American folk singer and social activist Pete Seeger said, "Songs are sneaky things, my friends. They can slip across borders. Proliferate in prisons. Penetrate hard shells. The right song at the right time can change history." Iqbal Bano sang Faiz's Hum Dekhenge in 1986. Two years later, in August 1988, Zia was gone, his 11-year rule ended by a plane crash.

Spot the Difference Between Sign and Symbol (Devdutt Pattanaik - Writer and Lecturer on Mythology in Modern Times)

➔ The symbol of India in Indian passports and Indian currency notes has been a lion and a spoked-wheel or chakra, both from the Ashoka pillar. Now the government has introduced the lotus on the passport, as part of security measures, we are told, to be replaced by other national symbols in subsequent months. But many see this as a political move, yet another path of saffronisation, as the lotus is the political symbol of the ruling Bharatiya Janata Party (BJP), the party which values the Hindutva ideology-based "Hindu Rashtra" over the more

secular "Idea of India". This draws our attention to symbols, and how politicians have reduced it to signs.

Meaning and Context

A sign has a singular meaning. A symbol has multiple meanings, shifting with context. For example, the red colour is a "stop" sign in traffic, but a "fertility" symbol in Hinduism, and in China, while being indicative of the "devil", "scarlet women" or "Santa Claus" in Christianity. Was the lion and the chakra chosen as a sign of India, or symbol? Does it have a specific meaning or a contextual one? One is constantly reminded it is not just any lion, or any chakra, it is that of Ashoka, which connects it with the first historical empire of India, the Mauryan, and to a king who found peace in Buddhism after years of violence. Did Ashoka see his symbols the same way as Indians did during the freedom struggle? Ashoka's India was very different from India under the British Raj. He lived in times when Buddha's body was never shown in art, but was represented as a lion (Sakyasimha or lion of sakya clan), or even as a wheel (Dhammachakka, or wheel of doctrine). Was the image on Ashoka's pillar then that of the Buddha itself? Could the symbol then be construed as religious? Or was it imperial? Either way, why was it suitable for a secular republic? Two hundred years ago, historians did not know anything about Ashoka or Buddha. Ashoka tales were found in folktales and legends. And Buddha was at best the ninth avatar of Vishnu as per some Hindu texts, but certainly not a popular sage or god — at least not to European imperialists and colonisers who were slowly dominating the world with their new technologies. It was the rise of the subjects such as archaeology and philology, that led a great interest in ancient history and the discovery of Ashoka's inscriptions and Buddhist manuscripts, that told the world of a revolutionary philosopher who lived five centuries before Jesus Christ and an emperor who lived shortly after Alexander the Great, who spoke of his subjects as his children, and expressed remorse over past violence.

Colonial Context

This was when Edwin Arnold wrote the book The Light of Asia and The Song Celestial that introduced the world, and many Indians studying abroad, including Ambedkar, Gandhi and Nehru, to both Buddha and Krishna. The non-violent Buddha was found to be more appealing than the complex theology of Krishna that seemed to valorise war. This was the time when Indians were rediscovering India, and Hinduism, which appeared grand in its polytheism to 18th century Orientalists, but was seeming rather vile, barbaric and brutally hierarchical with its adherence to caste system to 19th century advocates of liberty and equality. Knowledge was being discovered, and framed, by European colonisers who were arguing the case for British colonialism as being the White Man's Burden of civilising. It is important to see Ashoka's pillar in this light: indicative of a lost "good" India. Buddhism was glamorous in the mid-20th century. Nehru and Gandhi admired the Buddha. Ambedkar converted to Buddhism finding it more egalitarian, rational and revolutionary. Even Savarkar admired the Buddha, though he did feel that Buddhist pacifism caused the downfall of India, as it led to invasions and incursions, that could only partly be resisted by the rise of Rajputs. It is only now that academicians are pointing out to the deeply misogynist and homophobic nature of the Buddhist doctrine, and to its role in legitimising kingship, which played a key role in its rivalry with Brahmins. No one 70 years ago saw the lion or the wheel as a symbol of imperial power, the lion being the alpha predator, and the wheel indicating the sun, with the king's power located in the centre and the king's authority stretching out like spokes of

the wheel to the boundaries. Was that subliminal messaging to establish Delhi as the seat of power in the new Indian order? Is this excessive centralisation being taken to the next level by the Modi government, angering people in Kashmir, and Northeast India? The lion is also a Jain symbol of Mahavira, a contemporary of Buddha, and last of 24 Tirthankaras of this era. The wheel is also a Jain symbol of time and space as well as kingship, found atop every Jain mandir. Ashoka's grandfather, Chandragupta Maurya, mentioned in Greek chronicles, converted to Jainism, as per Jain legends. Mauryan rock cut caves show great value placed on monks and naked ascetics, who could belong to numerous sects, including Ajivikas, not just Buddhist or Jain. These shramanas, or strivers in Sanskrit, known as sammana in Prakrit, travelled to south, which is why across Tamil Nadu, Kerala, Karnataka, Andhra and Odisha we find mountains and caves associated with Jain and Buddhist ideas, overshadowed by later Puranic and Vedantic themes. Despite so much value placed on monasticism in Mauryan times, great value was also placed on Lakshmi, the goddess of wealth, and her symbol lotus. Lakshmi is one of the earliest goddesses to be carved in India, first in Buddhist shrines, also appearing in dreams of Jain mothers and being invoked in Vedic mantras. That makes the lotus not just a BJP symbol, just as the lion and the wheel are not just Buddhist symbols. The palm is also not just a Congress symbol; it is a gesture indicating protection (abhaya mudra) common to Buddhists, Jains and Hindus, and a common emoji indicating stop, or face-palm, i.e. a slap.

Massive Locust Invasion in Gujarat

- Sharing borders with neighbouring Pakistan, Gujarat is under attack from hoppers — new-born locusts — that have flown in across the international border. As the swarms mature, they have ravaged farms in north Gujarat, devastating farms in the three border districts — Banaskantha, Patan and Kutch. The locusts, known as tiddis locally, have wreaked havoc on standing crops including castor, cumin, jatropha and cotton, and fodder grass in around 20 talukas. Gujarat has not witnessed such an invasion of locusts since 1993-94. According to local experts, the State administration has been caught napping despite an alert from the UN Food and Agriculture Organisation (FAO) of a massive locust attack in South Asia, covering Pakistan and India. Also, the Locust Warning Organization (LWO) in Jodhpur had noticed the swarms and predicted their trajectory across the international border. However, preventive measures by the authorities were not taken. Among the border districts, Banaskantha is the worst affected. The insects fly in during the day and settle on the farms at night, making it difficult to ward them off. The farmers under siege are hiring workers and using age old techniques like beating drums and vessels to scare the locusts away without much success. "It's a massive issue in Banaskantha, Patan, Kutch and parts of Sabarkantha and Mehsana. We are trying to help farmers in containing damage to their crops," Gujarat's Agriculture Minister R.C. Faldu said, adding the "government also explored the possibility of sprinkling pesticides and chemicals through choppers in affected areas." Rather late in the day, the authorities have finally stepped in with more modern techniques to combat the voracious invasion. The State administration along with the central teams has launched huge pesticide-spraying operation to kill the insects. Locusts are flying in from Pakistan's Sindh province and spreading in villages in Rajasthan and Gujarat where south western monsoon had prolonged this time. Originally, the locusts emerged in February this year from Sudan and Eritrea on Africa's Red Sea Coast and travelled through Saudi Arabia and Iran to enter Pakistan, where they invaded the Sindh province and from there they moved into Rajasthan and Gujarat. The government has now assured farmers that the administration will carry out

a survey to assess the damages and will accordingly compensate farmers. However, farmers feel that the government's efforts and assurance are too little and too late.

While My Sarod Gently Weeps (Kunal Ray Teaches Literary and Cultural Studies at FLAME University, Pune)

➔ In early November, sitar exponent Shubhendra Rao was in the news when his musical instrument reached New York badly damaged before a performance. Mr. Rao wrote a long Facebook post about the incident, which was then widely reported by the media. He finally performed with his disciple's sitar though it was "like walking on an artificial limb," he said. Losing an instrument is akin to the loss of a dear one. Few other than musicians would understand this sentiment.

Many Instances

Mr. Rao is not the first Indian musician to have undergone this trauma. Apparently, Indian musicians are regularly subjected to such travel woes when they go overseas to perform. Perhaps vocalists, flautists and violinists don't have it as bad as sitar, sarod, sarangi, tabla, veena, and harmonium artists. Mr. Rao himself has been through three incidents of "vandalism," he said. In 1997, Ustad Amjad Ali Khan's sarod was damaged; in 2014, it was misplaced by the airline and later found and returned to him. In 2012, Ustad Aashish Khan opened his sarod case after a flight and found that the skin of the instrument had ripped down the centre. Veena exponent Jayanthi Kumaresh said she spends anxious moments at airports awaiting the arrival of her instrument. Some musicians prefer to reach overseas much before their performance having learnt their lessons from past travels. These are the experiences of well-regarded musicians, people with significant social and cultural capital and a fan following spanning across countries. But there are also musicians who are relatively unknown or perhaps not as well-known and who face such tragedies. Many of their experiences go unreported. Do we even know how many instruments are lost every year in such ordeals? According to popular folklore, Bharat Ratna Pandit Ravi Shankar used to book an additional flight seat next to him for his instrument for safety reasons. Musician Saskia Rao de Haas would buy an extra seat for her cello for more than 10 years until she designed a smaller electro-acoustic instrument that she now carries as hand luggage. This has become a norm with many musicians — they regularly travel with smaller, custom-made instruments to avoid casualties.

Cultural Ambassadors

Is the quality or sound of music compromised in the process? Of course, it is. And neither do smaller instruments have the grandeur of the 'real' instrument. This could be considered a significant artistic loss, an extinction of an aesthetic of sound. Will instruments like surbahar and rudra veena soon fall off the performance map owing to their length and thus complexities of travel? In any case, the smaller instrument doesn't end musicians' woes because security and airline staff often don't know their own rules. Further, airlines regularly require musicians to sign a limited release that absolves them of any damage of an instrument in transit. With such a rule, little can be done by way of remedy. Mr. Rao started a campaign on Change.org to have this rule abolished. More than 44,000 people have signed the petition but that's an insignificant number in a democracy to matter. Can our airlines and policymakers be more sensitive to the needs of travelling musicians? What about a special

travel policy for musicians travelling with their instruments? Can airlines staff be trained or oriented to handle these instruments better? Music may not be an election issue for anyone, but we often hear that musicians are our cultural ambassadors. If vehicles of music are regularly damaged, how will this cultural transmission happen? Our musicians ought to speak out more and not wait for personal tragedies to happen. In this regard, the complacency and insularity of some Indian classical musicians has not helped the cause of Indian classical music. Their silence, which has long prevailed, must end because this music must stay and also evolve with time as any social art form.

Why Is It Taking So Long to Label Fast Food?

➔ The Centre for Science and Environment (CSE) unveiled a new study this week which showed that salt and fat in an array of "junk food" was well above proposed regulatory thresholds. The packaged and fast foods analysed were chips, savouries, pizzas and burgers that are widely available in restaurants and other commercial outlets. This is not the first time that the CSE has conducted such research. However, the findings are significant as the Food Safety and Standards Authority of India (FSSAI) is yet to make into law draft regulations on setting limits, and publicising information, about nutrients in fast and packaged foods.

What Is the Law on Disclosing Nutritional Components?

Current Food Safety and Standards (Packaging and Labelling) Regulations, 2011 only require companies to disclose energy (kilo calories), protein, carbohydrates, total fat, trans-fat and saturated fat contained per 100g or per millilitre or per serve. It is not intuitively easy, without some mental math, to figure out how much is actually contained in your serving. There are also no disclosures on high salt content and added sugar, and no compulsion on companies to disclose nutritional information on the front of the pack. In 2013, the FSSAI, the apex food regulator under the Union Health Ministry, set up a committee to regulate packaged snacks. This committee, which consisted of doctors, nutrition experts, public policy activists and the CSE itself, recommended in 2014 that information on calories, sugar, fat, saturated fat and salt be displayed upfront. In 2018, the FSSAI came up with a draft law, the Food Safety and Standards (Labelling and Display) Regulations, 2018. The draft recommended that a packet should have clear information on how much each nutrient, such as salt, sugar, contributed to the RDA. The draft said salt must be declared as sodium chloride for instance, and that those ingredients which breached the RDA should be marked in 'red'. Food companies had reservations mainly because they felt 'red' signified danger, fearing that this would give consumers the impression that they were consuming toxic food. The draft regulations never became law. Instead, a third committee was formed, headed by B. Sesikeran, a former director of the NIN. Based on this committee's recommendations, a new draft (Draft Food Safety and Standards (Labelling and Display) Regulations, 2019) was prepared. This replaced sodium chloride with salt, total fat with saturated fat and total sugar with added sugar, which CSE says, dilutes information on the health harm posed by packaged foods. The new draft also exempts beverages less than 80kcal. In theory, a beverage can breach "added sugar" RDA without informing consumers as long as it is within the energy requirement. The proposed law allows companies three years to adjust to the new laws. However, the contribution of each individual nutrient to the RDA and whether it is breaching safe limits will have to be displayed on the front of the package. Though the draft regulations have been out in the public domain since July, it is yet to become law. The CSE's calculations are based on recommended nutritional values in the draft versions of these laws.

Why Is Industry Opposed to The Proposed Laws?

Other than the red labels, the industry says the norms are unscientific and that packaged food is made to cater to the "taste" of people. Moreover, the packaged industry argues, immense quantities of junk food — think samosas or fried food sold on unregulated pushcarts — are consumed in the country with no check on their nutritional status and there is an inherent unfairness in regulating one section alone. Because nutritional information only guides consumers on how to regulate their intake, the industry feels people should be advised on what makes a healthy diet, the role of exercise and consuming appropriate amounts of food. They claim the current regulations only contribute to fear-mongering.

Why Has Not the Food Safety and Standards Authority of India (FSSAI) Moved on The Draft?

A top FSSAI official told The Hindu that nearly 700 comments had been received on the 2019 draft and there were thorny issues to be resolved. To brand packaged food in different colours sends out the message that they are unsafe or "toxic"; this would be counterproductive to the larger aim of having a regulated but viable packaged food industry and people being educated about their food choices. Pawan Kumar Agarwal, CEO, FSSAI said he did not agree with the CSE's analysis and that there was still considerable work to be done on establishing appropriate "thresholds" (for salt, fat, etc) for India. He said regulation is "inevitable" and there would be more scrutiny of nutrient levels but in a way that would give packaged food companies time to adapt to stricter norms.

What Is the Practice Internationally?

The CSE says that the proposed labelling regulations publish too many numbers and an assortment of colour codes. This could potentially confuse people particularly because India has a vast non-English speaking population. Chile, for instance, has a system where a black hexagon in a white border appears on the front of a package. In the hexagon is a phrase that says a product is "high in salt" or "high in trans-fat." The more the hexagons the less desirable the product becomes for the consumer; surveys suggest that even children are becoming more conscious about the health impact of their favourite snacks and often influencing parents' buying choices. Surveys undertaken by the WHO show that a vast majority of European countries have some form of front-of-pack labelling, but fewer countries have interpretive systems which explain the health factor of foods.

What Is Brahmos Missile's Latest Upgrade?

➔ The Defence Research and Development Organisation (DRDO) carried out two successful tests of the latest variant of the BrahMos missile, one from the land platform and the other from air. BrahMos, developed through a collaboration between India and Russia, is one of the most advanced weapons in India's armoury.

The Missile

BrahMos is a cruise missile, meaning it can be guided towards a pre-determined land- or sea-based target. With a capability to attain speeds 2.8 times that of sound (Mach 2.8), BrahMos is classified as supersonic cruise missile. A newer version under development is aimed at flying at speeds greater than Mach 5. These are called hypersonic cruise missiles. Besides decreasing the reaction time of the enemy, higher speeds also substantially reduce the

chances of the missile getting intercepted. An amalgam of the names of the rivers Brahmaputra and Moskva, BrahMos is being produced by BrahMos Aerospace, a joint venture company set up by DRDO and Mashinostroyenia of Russia in 1998. The first version of the BrahMos supersonic cruise missile was inducted into the Indian Navy in 2005, meant to be fired from INS Rajput.

The Test

While the missile has been in India's arsenal for long, it is continuously upgraded and updated with new hardware and software. This is what necessitates periodic tests of the missile. DRDO scientists said that in every such exercise of a specific variant of BrahMos, different parameters are put to test. Though the exact details are not disclosed, additional hardware and software systems are tested based on the inputs from the user, against more complex targets, and under different atmospheric conditions. The test results and observations are important for future analysis and further advancement. "India's missile development programme has made sure that its missiles are upgraded and new systems are also developed. BrahMos has undergone development through the early 2000s till date. Its land-to-land, submarine-fired and now air-fired variants have been developed stage by stage. Each new version has something additional compared to the previous version," said a DRDO scientist.

Air-Based Test

One of the tests last week was carried out from air, using the Sukhoi-30 MKI fighter jets of the Indian Air Force as the base. The missile destroyed a target at sea. This was the third air-based test of the missile and marked the completion of the integration of BrahMos missile with the Sukhoi-30 MKI aircraft. In November 2017, the Indian Air Force had become the first in the world to successfully air-launch a Mach 2.8 supersonic surface-attack missile of this category from a fighter jet. It had destroyed an at sea-target in the Bay of Bengal at that time. This year, on May 22, an air-launch was tested again, this time against a land-based target in the Car Nicobar Islands region. The BrahMos Air-Launched Cruise Missile (ALCM), as it has since been called, has been a significant addition in IAF's air combat capability from stand-off ranges. *Stand-off range missiles* are ones that are launched at a distance sufficient to allow an attacking party to evade defensive fire expected from the target area. Officials said that stand-off range missiles, of which cruise missiles are a type, have been in the arsenal of all the major powers of the world. The test has again validated the ship attack capability of the ALCM. During the test, the missile was gravity-dropped from the fuselage of a Su-30 and the two-stage missile's engine fired up. Subsequently, the missile propelled towards a target ship at the sea, destroying it with pinpoint accuracy. The successful testing of air-platform of BrahMos has further strengthened the tactical cruise missile triad — land, sea and air — for India.

Business & Economics

Ironing Out the Wrinkles in Trade Disputes Adjudication (Jay Manoj Sanklecha - Lawyer Specialising in International Law)

➔ Mark Twain famously quipped that "the reports of my death are greatly exaggerated". With the retirement of two of the remaining three members of the World Trade Organization (WTO) Appellate Body on December 10, and a veto by the United States on fresh appointments, the "crown jewel" of the WTO been rendered dysfunctional. Although the demise of the Appellate Body has struck a blow to the rule of law, those drawing up the obituary of the WTO in the aftermath of its demise may have greatly exaggerated its consequences. The consequences of the Appellate Body's fall are overstated for a number of reasons. First, because this effectively marks a return to the dispute settlement system under the General Agreement on Tariffs and Trade (GATT) which, on the whole, proved surprisingly successful in resolving disputes. Second, most of the disputes at the WTO concern rules that are actually "self-enforcing", with the Appellate Body only policing its enforcement by domestic authorities. Finally, many States have conceived "alternative" strategies to overcome difficulties arising out of the absence of a functioning Appellate Body. The Appellate Body was set up in 1995 as a "safety valve" against erroneous panel reports in return for the membership agreeing to adopt reports using the "reverse consensus" rule in lieu of the "positive consensus" rule. Under the erstwhile positive consensus rule, reports issued by panels composed to hear disputes under GATT, could be adopted only if each of the contracting states favoured its adoption. This effectively handed a veto to the losing state. However, under the reverse consensus rule, the report would be automatically adopted, unless each member objected to the adoption of a report. To eliminate the likelihood of erroneous panel reports, the membership proposed the establishment of an Appellate Body, and the adoption of the report was postponed till after such appeal was adjudicated by the Appellate Body.

Return to GATT

The fall of the Appellate Body effectively marks a return to the previous system as it hands states an opportunity to appeal an adverse panel ruling and effectively indefinitely delay its adoption. While one would be forgiven to think that states under the GATT regime would almost always veto unfavourable reports, a remarkable 71% of panel reports were adopted using the positive consensus rule. Even where panel reports were not adopted by states they served as a basis for the parties to "bilaterally" resolve their disputes in a mutually satisfactory manner. In a vastly changed global economic landscape, the re-emphasis on diplomatic solutions in lieu of judicialized solutions to resolve inter-state trade disputes may not be an entirely bad outcome.

Trade Remedy Matters

The majority of the disputes at the WTO concern trade remedy matters. In such matters, if a state violates the rules, for example those concerning dumping of goods or grant of subsidies, affected states can without recourse to the WTO, adopt countermeasures such as imposition of anti-dumping and countervailing duties. The dispute resolution mechanism primarily aims to police the adoption of such countermeasures, namely whether they were

warranted and otherwise imposed consistently with the rules. As trade scholar Pauwelyn notes, the mechanism is geared to address "over-enforcement" rather than "under-enforcement" of WTO rules. While the fall of the Appellate Body may see the adoption of more unilateral sanctions by states, possibly leading to increased trade wars, it will not render the WTO rules unenforceable. The threat of reciprocal sanctions may in fact serve to encourage states to remain compliant with the rules even in the absence of a functional Appellate Body at the helm of the dispute mechanism.

Alternative Pathways

Finally, although the membership could not prevent the fall of the Appellate Body as we know it; several states have adopted ad hoc solutions. States such as Indonesia and Vietnam have, through a no appeal pact, agreed in advance not to appeal the ruling of the panel in the dispute between them, effectively waiving their right of appeal. The European Union (EU), Norway and Canada have agreed on an interim appeal system for resolving any disputes through arbitration using Article 25 of the dispute settlement understanding in a process mirroring that of the Appellate Body with former Appellate Body members appointed as arbitrators. The EU has even threatened to launch countermeasures under general international law for countries that lose at the panel stage but refuse recourse to the interim appeal system under Article 25 of the dispute settlement understanding and instead appeal the report "in limbo" with a view to avoid the adoption of the report altogether. Although the overall effectiveness of such alternative strategies to overcome the demise of the WTO Appellate Body is uncertain, they do represent good faith efforts by some members at resolving future trade disputes. In sum although the fall of the WTO Appellate Body represents a turbulent period in the history of trade disputes adjudication, it by no means spells the end of the WTO. On the contrary it presents an opportunity to the members to rethink and "iron out some of the creases" with the present system. The ongoing negotiations between the United States and India in relation to the Panel report in US-Carbon Steel, where the U.S. has appealed an adverse report to a dysfunctional body, may offer an insight into how the dispute settlement system evolves.

How Not to Counter Economic Stagnation (Arun Kumar - Malcolm Adiseshiah Chair Professor, Institute of Social Sciences, New Delhi, And the Author Of 'Ground Scorching Tax')

➔ The Centre and the States are so short of resources that their fiscal deficit is burgeoning. The Prime Minister, at a function of the Associated Chambers of Commerce and Industry of India recently, was optimistic but the Reserve Bank of India (RBI) Governor was less positive, admitting that the country's economic problems are also structural. The government has argued that its structural reforms would pay dividends in the long run. Whether or not that happens, action is needed now. So, what should the government do?

Impact on Tax Revenues

It has to give lead to the economy since the private sector, in its reaction to the slowdown, has lost confidence and is investing less, which is only aggravating the economic crisis. An RBI report suggests that business confidence, consumer confidence and capacity utilisation are down. So, there is no escaping the fact that the government has to garner resources and give a boost to the economy by increasing its investments. But the slowdown has adversely

impacted growth of tax revenues. The government calculated tax revenues on the assumption of a 12% nominal growth. But it has been around 9%, both last and this year. So, in 2018-19, tax revenue was short by about ₹1.5 lakh crore. But this was not reflected in the planning for the 2019-20 Budget. Therefore, given that the base for calculating tax revenue this year was wrong and the rate of growth is incorrect, the revenue shortfall for the Centre will be even larger than last year — around ₹2 lakh crore. The States get 42% of this revenue so they will get ₹84,000 crore less. Further, the concessions in corporate taxation of ₹1.45 lakh crore will also mean ₹58,000 crore less revenue for the States. While the Centre has obtained ₹1.76 lakh crore from the RBI's reserves, no such succour is available to the States. The Centre will also get the proceeds of disinvestment but that is not shared with the States. In brief, the States will have a larger shortfall in resources than the Centre. So, what can they do? The Goods and Services Tax (GST) Council met on December 18, where it was expected to help raise more indirect taxes by raising rates. Mercifully, that did not occur. So, revenue from indirect taxes cannot fill the resource gap. The States have also been complaining that they are not getting the funds that are due to them from the Centre. The Centre has partly responded to this by transferring more, but that raises its deficit. The Centre is required to give the States: their share of Integrated Goods and Services Tax (IGST) and compensate them if the revenue growth of State Goods and Services Tax is less than 14%. This last is to come from the cess collected on sin goods and luxury goods. One of the big contributors to GST has been the auto sector, but with sales falling over the last 10 months collections have declined. The Centre is apparently holding back the States' share of IGST and arguing that the cess collection is inadequate to compensate the States for their shortfall. The dilemma is that if the GST rates are increased, prices would rise and demand would further slump, further aggravating the slowdown and shortfall in revenues. One of the suggestions has been to raise the 5% slab to 6% or 10%. It has also been suggested that taxes on petro goods and liquor for human consumption are under the purview of the States, and they can raise tax rates on these items. But these will be inflationary moves and demand would fall. The problem is compounded by the shortfall in direct tax collections. This is both the result of corporate tax concessions and the slowing economy. Income-tax rates cannot be raised now since that would be seen as inequitable — rich corporates will pay a lower tax rate than the middle classes, who pay income-tax.

Effect Of I-T Reduction

There is pressure to reduce income-tax rates to boost demand in the economy. But a cut in income-tax rates will largely benefit less than 2% of the citizens who pay a significant amount of income-tax. They are well-to-do and unlikely to increase consumption. Similarly, the cut in corporate tax rates will not boost demand since neither investment nor consumption will rise. Investment will rise only when capacity utilisation improves. Much store is being laid at the doors of multi-national corporations relocating their factories from China to India but this will be too small to arrest the current declining trend in investment in India.

Unorganised Sector Missed

The problem has been that government has been in denial and delayed action till after the Budget in July 2019. Even then it catered to the corporate sector slowdown and not where the problem originated from: the unorganised sector. The concessions to the corporate sector have narrowed the fiscal space available without raising demand. If the unorganised sector is separately accounted for, the economy is in a recession — it is not just a slowdown

as official data based only on the organised sector indicates. The fiscal deficit at all levels of government is already high so a policy decision is needed on how much more it can be. If the fiscal deficit is allowed to rise further, extra resources can be used to boost incomes in the unorganised sectors through greater public investments. In the 150th year of Gandhiji, his talisman, "last person first" is the need of the hour.

- India is now in the midst of a significant economic slowdown, the International Monetary Fund has said, urging the government to take urgent policy actions to address the current prolonged downturn. In its report, the IMF Directors noted that India's rapid economic expansion in recent years has lifted millions of people out of poverty. However, in the first half of 2019, a combination of factors led to subdued economic growth in India. "The issue in India currently is the growth slowdown. We still believe it is mostly cyclical, not structural... because of the financial sector issues, we think, the recovery will be not as quickly quick as we thought earlier. That's the main issue," Ranil Salgado, Mission Chief for India in the IMF Asia and Pacific Department told PTI in an interview as it released its annual staff report on India. With risks to the outlook tilted to the downside, the IMF Directors called for continued sound macroeconomic management. They saw an opportunity with the strong mandate of the new government to reinvigorate the reform agenda to boost inclusive and sustainable growth, the report said. The staff report was done in August when the IMF was not fully aware of India's current economic slowdown. Growth in the second quarter of FY 2019/20 came in at a six-year low of 4.5 per cent (y/y), and the composition of growth indicates that private domestic demand expanded by only 1 per cent in the quarter.

Economic Revival Key to Banks' Health

- As the GDP growth has plunged to an over six-year low of 4.5 per cent in the second quarter of the ongoing fiscal, *credit expansion* may plummet to a six-decade low of 6.5-7 per cent in FY20, says a report. Credit growth was a high 13.3 per cent in the previous fiscal, says rating agency ICRA in a report. If the forecast turns out to be true, this will be lowest credit growth in as many as 58 years -- credit growth stood at a low 5.4 per cent in FY 1962, according to the annual credit growth data on the RBI website. Till end-November, according to RBI data, credit growth has been clipping at under 8 per cent. "Factors such as muted economic growth, lower working capital requirements as well as risk-aversion among lenders will compress the incremental credit growth in FY20," report said, adding there was little demand for funds from three out of four key sectors -- agriculture, industry, services and retail loans. Till December 6, the incremental credit growth has risen by just ₹80,000 crore to ₹98.1 trillion compared to a rise of ₹5.4 lakh crore and ₹1.7 lakh crore during the same period in FY19 and Fy18, respectively, says the report.
- While the Indian banking sector's financial parameters such as bad loans and capital adequacy have shown an improvement in recent times, the overall health of banking sector will depend on revival in economic growth, the Reserve Bank of India (RBI) said in its Report on Trend and Progress of Banking in India 2018-19. The growth slowdown of the country intensified with GDP growth for the second quarter of the current financial year dipping to a six-year low of 4.5%. The report noted that during 2018-19, the asset quality of scheduled commercial banks turned around after a gap of seven years with the overhang of stressed assets declining and fresh slippages arrested. As a result of declining provisioning requirement, the banking sector returned to profitability in the first half of 2019-20. Besides, recapitalisation had helped public sector banks in shoring up their capital ratios. Despite improvement in some of these parameters, the risk-averse nature among lenders was

worrisome, the banking regulator said. The slowdown of credit flow to the commercial sector in the first half of 2019-20 was evidence of the aversion to risk. This is worrisome as it is taking hold at a time when the recent improvements in asset quality and profitability of the banking sector are at a nascent stage and capital ratios of public sector banks (PSBs) are shored up due to recapitalisation by the government," the RBI said. The report observed that capital infusion by the government in public sector banks was 'just enough' to meet the regulatory minimum, including capital conservation buffer. The RBI said banks' capacity to sustain credit growth in consonance with the financing requirements of the economy will, however, warrant that capital is maintained well above the regulatory minimum, providing these banks confidence to assume risk and to lend. Commenting that recapitalisation would be a continuous process, the RBI said that going forward, the financial health of PSBs should increasingly be assessed by their ability to access capital markets rather than looking to the government as a recapitaliser of the first and last resort.

More 5G Spectrum Sale on Anvil

➔ Preparations have started to bring in more 5G spectrum to be put on sale towards the end of 2020, according to an official. This comes in the wake of the Centre's decision to conduct auctions for more than 8,300 Mhz of spectrum, including those to be used to offer 5G service, in March-April next year. The Department of Telecom (DoT) will soon seek the Telecom Regulatory Authority of India's (TRAI) recommendation on the auction of spectrum in the 24.75 to 27.25 Ghz band, which is considered highly suited to 5G services deployment. The official said currently, three spectrum bands are considered good for offering 5G services, two of which — the 700 MHz and 3.4 GHz-3.6 Ghz — will be put up for sale in the upcoming auction. The Cellular Operators Association of India has been requesting the government to seek TRAI's views on 26 GHz band. Earlier this month, the Digital Communications Commission — the highest decision-making body in the DoT — gave its approval for TRAI's recommendation to put 8300 MHz of airwaves across 22 circles up for sale. About 35% of this spectrum is for 5G services. Asked about 5G trials, the official said the DoT had received seven applications, including from players such as Ericsson, Samsung, Nokia, Huawei and ZTE.

Tata-Mistry Ruling

➔ On December 18, the National Company Law Appellate Tribunal or NCLAT (as the appellate tribunal is known) declared as "illegal" the October 2016 removal of Cyrus P. Mistry as Executive Chairman of Tata Sons Limited and ordered his reinstatement to the post. In a 172-page order, a two-member bench of the NCLAT comprising its Chairperson Justice S.J. Mukhopadhaya and Member (Judicial) Justice Bansi Lal Bhat, set aside the judgment passed by the National Company Law Tribunal (NCLT), Mumbai, on July 9, 2018, and ordered that "disparaging" and "unsubstantiated" remarks made by the NCLT against the appellants, Mr. Mistry and others, be expunged. The appellate tribunal, however, suspended its order on Mr. Mistry's reinstatement as Executive Chairman of Tata Sons — in place of the incumbent, whose appointment was deemed illegal — for a period of four weeks "with a view to ensure smooth functioning of the company". In response, Tata Sons has said it "strongly believes in the strength of its case and will take appropriate legal recourse".

What Is The NCLAT?

As part of a comprehensive revamp of the adjudication of corporate law disputes, the NCLAT was constituted with effect from June 1, 2016, for hearing appeals against the orders of the NCLT, which, in turn, simultaneously replaced the erstwhile Company Law Board. Constituted under Section 410 of the Companies Act, 2013, the appellate tribunal was conceived as the dedicated appeals forum for resolving corporate law disputes and speeding up the resolution by taking over the role hitherto played by overburdened High Courts in adjudicating such appeals. Besides deciding on prayers against the NCLT's rulings, including in matters relating to the Insolvency and Bankruptcy Code (IBC), the NCLAT also serves as the appellate body for those aggrieved by decisions made by the Competition Commission of India or orders passed by the Insolvency and Bankruptcy Board of India under Sections 202 and 211 of the Insolvency and Bankruptcy Code (IBC). *Established in New Delhi, the NCLAT initially comprised five members: two members each on the judicial and technical sides and the Chairperson Justice S.J. Mukhopadhaya. As part of its efforts to strengthen the entire NCLT and NCLAT apparatus with a view to further reducing pendency, the Centre this year added a total of four new members to the NCLAT — two each in judicial and technical capacities.* The government has also decided to set up a bench of the appellate tribunal at Chennai, Minister of State for Finance and Corporate Affairs Anurag Singh Thakur said in a written reply to a question in Lok Sabha on December 2, 2019. While a member (Judicial) of the NCLAT has to have been a judge of a High Court or a judicial member of the NCLT for five years, a technical member ought to possess proven ability and standing with domain knowledge and experience of not less than 25 years in areas such as law, industrial finance, industrial management, investment, accountancy, labour matters or corporate restructuring. The chairperson must have been a judge of the Supreme Court of India or a Chief Justice of a High Court.

How Does the Appeals Process Work?

A party aggrieved by a ruling by any of the NCLT's numerous benches can file an appeal against it within 45 days of receipt of a copy of the order, with a further 45 days allowed if the NCLAT is satisfied that the appellant had sufficient cause that prevented the filing of the appeal within the stipulated period. The NCLAT's verdicts can in turn be challenged on a question of law in the Supreme Court, within a 60-day window.

Have the NCLAT's Rulings Been Challenged?

While the appellate body has adjudicated on several significant precedent setting cases, some of its recent decisions have faced intense judicial scrutiny including one pertaining to ArcelorMittal's bid to acquire debt-laden Essar Steel. The NCLAT ruling in this case was challenged in the Supreme Court, which overturned a significant portion of the verdict. In its November judgment, the top court upheld the primacy of financial creditors over operational creditors in the repayment's waterfall, settling the disquiet spurred by the NCLAT's decision to seemingly place secured financial creditors on a par with the operational creditors. And earlier in September, the Supreme Court had first stayed and then overturned a ruling by the NCLAT in an IBC case pertaining to Amtek Auto. While the appellate tribunal had ordered the liquidation of the embattled auto parts maker, the court ordered that the resolution professional and lenders could invite fresh bids for the company.

Life & Science

Blow to NASA ISS mission: What Happened?

➔ A space capsule built to ferry astronauts to the International Space Station (ISS) has failed its first test flight, and will now return to Earth without completing its mission. The capsule, named Starliner, has been built by Boeing, and was successfully launched by NASA from Cape Canaveral, Florida, on Friday morning (evening in India).

What Went Wrong?

The United Launch Alliance (ULA) Atlas V rocket lifted off successfully, and Boeing's CST-100 Starliner separated as expected. Updates on the flight tracker on the NASA website said it was "flying on its own, embarking on its inaugural flight to the International Space Station". The rocket was supposed to fall in the Pacific Ocean near Australia, while Starliner, "after a series of orbital adjustments", was to be "on course for rendezvous and docking with the space station at 5 am on Saturday, December 21". However, the Starliner apparently fired its engines at the wrong time and, as a result, entered a wrong orbit. NASA reported that the capsule was "not in its planned orbit", although "in a stable configuration while flight controllers are troubleshooting". A top Boeing official, Jim Chilton, was quoted by The New York Times as saying "we don't understand the root cause" of why the spacecraft's clock was set at the wrong time. Attempts to send a command to fix the problem apparently did not reach the spacecraft because it was in between satellite communication links. At a news conference, Bridenstine said the faulty thrusting had caused far too much fuel to be burned, and the mission would no longer be pursued. "That's safe to take off the table at this point," he said. "It's not worth doing at this point given the amount of fuel we burned." NASA was planning to have the capsule land in California on Sunday.

How Big A Setback Is This?

This was a trial mission, with no one on board except a spacesuit-wearing mannequin called Rosie strapped to one of the seats. Sensors on Rosie were supposed to measure the forces that future astronauts would feel in the spacecraft. NASA said any astronauts on board would not have been at risk due to Starliner veering off-course — in fact, they might have been able to take over the spacecraft and tried to get the thruster burn right. Yet, the failure is likely to push back further NASA's already delayed — and repeatedly postponed — attempt at resuming human spaceflight from the United States. NASA has contracts with Boeing and Elon Musk's SpaceX to build spacecraft to ferry astronauts to and from the ISS. For more than eight years, no human has gone to space from US soil, and NASA has relied on Russia to get its astronauts on the space station. Friday's failure could delay the programme by perhaps a couple more years. It is unclear in what shape the Starliner would be when it lands, and whether it would be possible to examine the reason for the thruster malfunction. SpaceX's Crew Dragon capsule is scheduled to launch on January 11. It will be a crewless flight, and if it succeeds, SpaceX could be in a position to send astronauts into space in the first half of next year.

Study Warns of Growing Cancer Burden Across India

➔ A study tracing the growing burden of cancer in India states that most of the increase in cancer incidences are attributable to its epidemiological transition and improvement in the use of cancer diagnostics. The country's cancer burden will continue to increase as a result of the ongoing ageing of India and improving access to cancer diagnostics in rural India, said Mohandas K. Mallath of the Tata Medical Centre, Kolkata, and Robert Smith from Kings College, London, in a recent paper: History of Growing burden of Cancer in India: From Antiquity to 21st century. The study has stated that while cancer-like diseases were documented since antiquity, recording of cancer in India began only in the 19th century when the Western medical practices of biopsy and pathological examination came to India during the colonial British regime. Cancer is primarily a disease of older people, hence, as life expectancy went up, cancer incidences too went up. Maximum increases will occur in the most populous and least developed States, where the facilities for cancer diagnostics and treatment are grossly inadequate. The present study offers lessons for planning cancer care in States as well as other countries experiencing epidemiological transition. In India the fastest epidemiological transition happened in Kerala, whereas Uttar Pradesh remained in the slowest group, he said. A direct comparison of the demographic and social variables, available health care facilities and leading causes of mortality in these two States shows how the low incidences of infectious diseases in Kerala has given rise to more cancer compared to U.P., which is still battling high mortality from communicable diseases. The types of cancers in India are also undergoing a transition, similar to a report from Japan five decades ago. There has been a decline of cancers caused by infections, such as cervical, stomach, and penile cancer, and an increase in cancers associated with energy intake, physical activity imbalance and ageing, such as breast, colorectal and prostate cancers. Cancer transitions can influence the requirements for site-specialized cancer surgeons, the study says. For example, Kerala will need more breast oncologists and U.P. will need more gynaecological oncologists. The association of tobacco chewing with cancer and subsequent warnings were published more than a century ago. But the habit has remained unchecked and has spread all over India, and it is now estimated to cause a fifth of all cancers in India, the study says. Out-of-pocket expenditure is three times higher for private inpatient cancer care in India. Approximately 40% of cancer costs are met through borrowing, sale of assets, and contributions from friends and relatives.

Earliest Sanskrit Inscription in South India Found

➔ In a significant find, the Epigraphy Branch of the Archaeological Survey of India has discovered the earliest epigraphic evidence so far for the Saptamatrika cult. It is also the earliest Sanskrit inscription to have been discovered in South India as on date. Saptamatrikas are a group of seven female deities worshipped in Hinduism as personifying the energy of their respective consorts. The inscription is in Sanskrit and in Brahmi characters and was issued by Satavahana king Vijaya in 207 A.D. Dr. K. Muniratnam, Director, Epigraphy branch, ASI, Mysuru told The Hindu that it was discovered in Chebrolu village in Guntur district of Andhra Pradesh earlier this month. Local villagers informed the authorities of the presence of a pillar with some engravings when they were restoring and repairing the local Bheemeshwara temple. The inscription was first copied and studied and it transpired that it records the construction of a prasada (temple), a mandapa and consecration of images on the southern side of the temple by a person named Kartika for the merit of the king at the

temple of Bhagavathi (Goddess) Saktimatruka (Saptamatrika) at Tambrape; Tambrape being the ancient name of Chebrolou, said Dr. Muniratnam. He said there are references of Saptamatrika worship in the early Kadamba copper plates and the early Chalukyas and Eastern Chalukya copper plates. But the new discovery predates them by almost 200 years. The verification of all the available records proved that the Chebrolu inscription of Satavahana king Vijaya issued in his 5th regnal year – 207 A.D. — is also the earliest datable Sanskrit inscription from South India so far, said Dr. Muniratnam. So far, the Nagarjunakonda inscription of Ikshavaku king Ehavala Chantamula issued in his 11th regnal year corresponding to the 4th century A.D. was considered the earliest Sanskrit inscription in South India, he added.

ToTok

➔ ToTok, a chat and voice calling app that became available earlier this year and has since been downloaded millions of times from the Apple and Google app stores, is actually a spying tool, according to a United States intelligence assessment, The New York Times reported on Sunday. ToTok is used by the government of the United Arab Emirates (UAE) to try to track every conversation, movement, relationship, appointment, sound and image of those who install it on their phones, The New York Times, which investigated both the app and its developers, said. The UAE has restricted popular messaging services like WhatsApp and Skype, and ToTok was billed as a "fast, free, and secure" way to chat by video or text message. While the majority of its users are in the Emirates, the app has been downloaded throughout the Middle East, and in Europe, Asia, Africa, and North America. In the US, ToTok surged to become one of the most downloaded social apps last week, according to app rankings and App Annie, a research firm, The NYT report said. According to recent Google Play rankings quoted by the report, it was among the top 50 free apps in Saudi Arabia, the UK, India, Sweden, and other countries. However, not many people in India actually use ToTok.

HOW TOTOK WORKS: ToTok appears to be a copy of YeeCall, a Chinese messaging app offering free video calls, slightly customised for English and Arabic audiences, according to a forensic analysis commissioned by The NYT. It functions much like the myriad other Apple and Android apps that track users' location and contacts. Its name is an apparent play on the Chinese app TikTok, which is hugely popular in India. The Chinese telecom giant Huawei recently promoted ToTok in advertisements.

WHO'S BEHIND TOTOK: According to The NYT, the firm behind ToTok is Breej Holding, most likely a front company affiliated with DarkMatter, an Abu Dhabi-based cyberintelligence and hacking firm where Emirati intelligence officials, former US National Security Agency employees, and former Israeli military intelligence operatives work. DarkMatter is under FBI investigation, according to former employees and law enforcement officials, for possible cybercrimes.

WHAT HAPPENS NOW: The NYT report has been quoted extensively in media across the world. On Thursday, Google removed the app from its Play store after determining ToTok violated unspecified policies. Apple removed ToTok from its App Store on Friday and was still researching the app. Users who already downloaded the app will still be able to use it until they remove it from their phones.