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School of Public Policy and Governance

NITI और NYAY

Accountable Governance, Human Opportunities, Just Societies
Acknowledgement
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With twenty new bills introduced in the Parliament, nineteen of those in the Lok Sabha, the Monsoon session of 2018 can be termed as a successful one. The Lok Sabha attained productivity level of a hundred and ten percent with the Rajya Sabha trailing at sixty-eight percent. The Lok Sabha was in the sitting for a total of hundred and twelve hours, of which fifty-five hours were devoted for legislative work and fourteen hours for questions. The Rajya Sabha sat for a total of seventy-three hours, twenty-nine of which were devoted for legislation and ten for questions. The Question hour saw seventy-five questions answered by ministers in the Lok Sabha and ninety-one questions answered by ministers in the Rajya Sabha. Four new, non-amendment pieces of legislation that were introduced in the parliament deal with issues of Trafficking of Persons, DNA Technology, a National Sports University, and Unregulated Deposit Schemes. As has been the trend in the recent decades, only one of these 20 Bills was sent to any Standing Committee for feedback.
<table>
<thead>
<tr>
<th>Title</th>
<th>Objective</th>
<th>Status</th>
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</table>
| The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities (Amendment) Bill, 2018 | The bill seeks to amend the provision in the relevant Act of 1999 related to service tenure and resignation of the Chairperson and members of the Board of the National Trust. Under the provisions of the existent Act, the members and Chairperson can continue in office until their successors are appointed. The Bill amends this provision to fix the tenure of the Chairperson and members of the Board to three years. Further, the Bill states that the central government will initiate the process for appointment of the Chairperson or any member of the Board, at least six months prior to the expiry of his tenure. The Act states that if the Chairperson or members of the Board resign, they will continue in office until their successor is appointed by the central government. The Bill amends this to allow the Chairperson or members of the Board to hold office till their resignation is accepted by the central government. | House of Introduction: Rajya Sabha  
Referred to Standing Committee: No  
Pending in the originating house. |
| The Arbitration and Conciliation (Amendment) Bill, 2018             | The Bill seeks to amend the Arbitration and Conciliation Act, 1996. It seeks to remove the prerogative of parties to appoint arbitrators and devolves that function to arbitral institutions designated for the purpose by Supreme Court in case of international arbitrations and by the concerned High Court in the eventuality of domestic arbitration. In case there are no arbitral institutions available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators to perform the functions of the arbitral institutions. An application for appointment of an arbitrator is required to be disposed of within 30 days. | House of Introduction: Lok Sabha  
Referred to Standing Committee: No  
Pending in the originating house. |
| The Airports Economic Regulatory Authority of India (Amendment) Bill, 2018 | The Bill seeks to amend the threshold of annual passenger traffic in the definition of major airports from a minimum of 15 lakh to a minimum of 35 lakh. It also provides that the AERA will not determine: (i) the tariff, (ii) tariff structures, or (iii) the development fees in certain cases. These cases will include those where such tariff amounts were a part of the bid document on the basis of which the airport operations were awarded. However, the AERA will be consulted before incorporating such tariffs in the bid document and such tariffs must be notified. | House of Introduction: Lok Sabha  
Referred to Standing Committee: No  
Pending in the originating house. |
<p>| The Banning of Unregulated Deposit                                  | The Bill provides for a mechanism to ban unregulated deposit schemes and protect the interests of depositors. A deposit-taking scheme is defined as unregulated if it is not registered with the regulators listed in the Bill. It also seeks to amend three laws, including the Reserve Bank of | House of Introduction: Lok Sabha |
| Schemes Bill, 2018 | India Act, 1934 and the Securities and Exchange Board of India Act, 1992. Currently, nine regulators oversee and regulate various deposit-taking schemes. These include: RBI, SEBI, Ministry of Corporate Affairs, and state and union territory governments. For example, RBI regulates deposits accepted by non-banking financial companies, SEBI regulates mutual funds, state and union territory governments regulate chit funds, among others. The Bill defines a deposit as an amount of money received through an advance, a loan, or in any other form, with a promise to be returned with or without interest. Such deposit may be returned either in cash or as a service, and the time of return may or may not be specified. The Bill defines deposit takers as an individual, a group of individuals, or a company who asks for (solicits), or receives deposits. Banks and entities incorporated under any other law are not included as deposit takers. |
| The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 | The Bill provides for the prevention, rescue, and rehabilitation of trafficked persons. It also provides for the establishment of a National Anti-Trafficking Bureau to investigate trafficking cases and implement provisions of the Bill. The Bill requires the central or state government to set up Protection Homes. These would provide shelter, food, counselling, and medical services to victims. Further, the central or state government will maintain Rehabilitation Homes in each district, to provide long-term rehabilitation to the victims. Rehabilitation of victims will not be dependent on criminal proceedings being initiated against the accused, or on the outcome of the proceedings. The central government will also create a Rehabilitation Fund, which will be used to set up these Protection and Rehabilitation Homes. |
| The National Sports University Bill, 2018 | It replaces the National Sports University Ordinance, 2018 that was promulgated on May 31, 2018. The Bill seeks to establish a National Sports University in Manipur. It may establish outlying campuses (within or outside India), colleges, or regional centers. The University will: (i) undertake research on physical education, (ii) strengthen sports training programmes, and (iii) collaborate internationally in the field of physical education, among other things. |</p>
<table>
<thead>
<tr>
<th>The Micro Small and Medium Enterprises Development (Amendment) Bill, 2018</th>
<th>The Bill amends the relevant Act of 2006. The Bill seeks to change the earlier classification of enterprises as Micro, Small and Medium which was based on investment in plant and machinery in case of Manufacturing sector and investment in equipment in case of Services sector to a uniform classification based on annual turnover for both. The Bill allows the central government to change these annual turnover limits through a notification thereby avoiding repetitive amendments. The maximum turnover may be up to three times the limits specified in the Bill. Under the Act, the central government may classify micro, tiny or village enterprises as small enterprises. The Bill seeks to allow the classification of micro, tiny or village enterprises as small as well as medium enterprises.</th>
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<tr>
<td>The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018</td>
<td>The Commercial Courts Act, 2015 provides for commercial courts and commercial divisions of high courts to adjudicate commercial disputes with a value of at Rs one crore. The Bill reduces this limit to Rs three lakh. The Bill allows state governments to establish commercial courts at the district level, even in territories where high courts have ordinary original civil jurisdiction. In areas where high courts do not have original jurisdiction, state governments may set up commercial appellate courts at the district level to consider appeals from commercial courts below the level of a district judge.</td>
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<td>The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018</td>
<td>The Bill amends the Insolvency and Bankruptcy Code, 2016 to clarify that allottees under a real estate project should be treated as financial creditors. The voting threshold for routine decisions taken by the committee of creditors has been reduced from 75% to 51%. For certain key decisions, this threshold has been reduced to 66%. The Bill allows the withdrawal of a resolution application submitted to the NCLT under the Code. This decision can be taken with the approval of 90% of the committee of creditors.</td>
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<tr>
<td>The Criminal Law (Amendment) Bill, 2018</td>
<td>The Bill amends the IPC, 1860 to increase the minimum punishment for rape of women from seven years to ten years.</td>
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Rape and gang rape of girls below the age of 12 years will carry minimum imprisonment of twenty years and is extendable to life imprisonment or death.

Rape of girls below the age of 16 years is punishable with imprisonment of twenty years or life imprisonment.

### The Homoeopathy Central Council (Amendment) Bill, 2018

The Bill amends the 1973 Act to provide for the super-session of the Central Council which will be reconstituted within one year from the date of its super-session. In the interim period, the central government will constitute a Board of Governors, which will exercise the powers of the Central Council. With regard to policy decisions, the directions of the central government will be final.

The Bill states that: (i) if any person has established a homeopathy medical college, or (ii) if an established homeopathy medical college has opened new courses or increased its admission capacity before the passage of the Bill, it will have to seek permission from the central government within one year. If the person or homeopathy medical college fails to seek such permission, then any medical qualification granted to a student from such medical college will not be recognized under the Act.

### The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2018

The bill seeks to amend the relevant act of 1989 in light of 2018 Supreme Court judgment stating that for persons accused of committing an offence under the Act, approval of the Senior Superintendent of Police will be required before an arrest is made. Further, the judgment provides that the Deputy Superintendent of Police may conduct a preliminary enquiry to find out whether there is a prima facie case under the Act.

The Bill states that the investigating officer will not require the approval of any authority for the arrest of an accused. Further, it provides that a preliminary enquiry will not be required for the registration of a First Information Report against a person accused under the Act.

The Act of 1989 states that persons accused of committing an offence under the Act cannot apply for anticipatory bail. The Bill seeks to clarify that this provision will apply despite any judgments or orders of a court that provide otherwise.
<table>
<thead>
<tr>
<th>Bill Description</th>
<th>Details</th>
<th>House of Introduction</th>
<th>Referred to Standing Committee</th>
<th>Pending in the originating house</th>
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<tr>
<td><em>The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018</em></td>
<td>The relevant Act of 2015 provides for the adoption of children by prospective adoptive parents from India and abroad. The Act provides that a court of law issue the adoption order establishing that the child belongs to the adoptive parents. The Bill seeks to shift that function to the District Magistrate. The Bill seeks to transfer all pending matters related to adoption before any court to the District Magistrate having jurisdiction over the area.</td>
<td>Lok Sabha</td>
<td>No</td>
<td>No</td>
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<tr>
<td><em>The Central Goods and Services Tax (Amendment) Bill, 2018</em></td>
<td>The Act provides for a composition scheme to allow certain taxpayers with an annual turnover of less than rupees 1 crore to pay GST on their turnover, instead of on the value of supply of goods and services. The Bill increases this limit from Rs one crore to Rs 1.5 crore.</td>
<td>Lok Sabha</td>
<td>No</td>
<td>No</td>
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<td><em>The Integrated Goods and Services Tax (Amendment) Bill, 2018</em></td>
<td>Under the Act, when an unregistered person supplies goods or services to a registered person, the registered person is liable to pay the IGST on such supply. The Bill amends this provision to allow the central government, on the recommendation of the GST Council, to specify a class of registered persons to pay tax on receiving specified categories of goods and services from an unregistered person. The Act provides for the determination of the place of supply of goods and services. In cases where services are supplied through transportation of goods, including by mail and courier, to a registered person, the place of supply is the location of such person. In other cases, where the services are supplied to an unregistered person, the place of supply is where the goods are handed over for their transportation. The Bill clarifies that in the above cases, if the goods are being transported to a place outside India, the place of supply will be the destination of the goods. Under the Act, the IGST revenue collected by the centre is apportioned between the centre and the state where the supply of goods or services was received. The Bill provides for the settlement of any balance amount in the integrated tax account after the apportionment to the</td>
<td>Lok Sabha</td>
<td>No</td>
<td>No</td>
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centre and state. On the recommendation of the GST Council, this amount will be distributed equally between the centre and the state.

| The Union Territory Goods and Services Tax (Amendment) Bill, 2018 | Under the Act, when an unregistered person supplies goods or services to a registered person (annual turnover above Rs 20 lakh), the registered person is liable to pay the IGST on such supply. The Bill amends this provision to allow the central government, on the recommendation of the GST Council, to specify a class of registered persons to pay tax on receiving specified categories of goods and services from an unregistered person.

Under the Act, a registered person while paying taxes on outputs, may take credit equivalent to taxes paid on inputs. The amount of input tax credit available on UTGST has to be first utilised to pay UTGST and if there is any remaining amount, it has to be utilised to pay Integrated Goods and Services Tax (IGST). |
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<tr>
<td>The Goods and Services Tax (Compensation to States) Amendment Bill, 2018</td>
<td>Under the Act, any unutilised amount in the Compensation Fund at the end of the transition period (five years from the date on which the state brings its State GST Act into force) is distributed in the following manner: (i) 50% of the amount is shared between the states in proportion to their total revenue, and (ii) remaining 50% is a part of the centre’s divisible pool of taxes. The Bill replaces the term total revenue with “base year revenue” with the base year being 2015-16.</td>
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<td>The DNA Technology (Use and Application) Regulation Bill, 2018</td>
<td>Under the Bill, DNA testing is allowed only in respect of matters listed in the schedule to the Bill (such as, for offences under the Indian Penal Code, 1860, for paternity suits, or to identify abandoned children). While preparing a DNA profile, bodily substances of persons may be collected by the investigating authorities. Authorities are required to obtain consent for collection in certain situations. For arrested persons, authorities are required to obtain consent if the offence carries a punishment of up to seven years. If the offence carries more than seven years of imprisonment or death, consent is not required. Further, if the person is a victim, or relative of a missing person, or a minor or disabled person, the authority is required to obtain the consent of such victim, or relative, or parent or guardian of the minor or disabled person.</td>
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| House of Introduction: Lok Sabha | Referred to Standing Committee: No Pending in the originating house. |
| House of Introduction: Lok Sabha | Referred to Standing Committee: No Pending in the originating house. |
| House of Introduction: Lok Sabha | Referred to Standing Committee: No Pending in the originating house. |
consent is not given in either case, the authorities can approach the Magistrate.

The Bill provides for the establishment of a National DNA Data Bank and regional DNA Data Banks, for every state, or two or more states. The National Data Bank will store DNA profiles received from DNA laboratories and receive DNA data from the regional Banks. Every Data Bank will be required to maintain indices for the following categories of data: (i) a crime scene index, (ii) a suspects’ or undertrials’ index, (iii) an offenders’ index, (iv) a missing persons’ index, and (v) an unknown deceased persons’ index.

Under the Bill, the Board is required to ensure that all information relating to DNA profiles with the Data Banks, laboratories and other persons are kept confidential. DNA data may only be used for identification of the person. However, the Bill allows for access to information in the Data Bank for the purpose of a one-time keyboard search. This search allows for information from a DNA sample to be compared with information in the index without information from the sample being included in the index.

The Bill states that the criteria for entry, retention or removal of the DNA profile will be specified by regulations. However, the Bill provides for removal of the DNA Data of the following persons: (i) of a suspect if a police report is filed or court order given, (ii) of an undertrial if a court order is given, (iii) on request, of persons who are not a suspect, offender or undertrial from the crime scene or missing persons’ index. Further, the Bill provides that information contained in the crime scene index will be retained.

The Bill provides for the establishment of a DNA Regulatory Board, which will supervise the DNA Data Banks and DNA Laboratories. The Secretary, Department of Biotechnology, will be the ex officio Chairperson of the Board. The Board will comprise an additional 12 members including: (i) an eminent person with at least 25 years’ experience in biological sciences, as the Vice Chairperson, and (ii) Director General of the National Investigation Agency and the Director of the Central Bureau of Investigation or their nominees (of at least the rank of Joint Director).

Disclosure of DNA information will be punishable with imprisonment of up to three years and fine of up to Rs one lakh.
The primary intended purpose for enactment of the Bill is for expanding the application of DNA-based forensic technologies to support and strengthen the justice delivery system of the country.

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<th>The Protection of Human Rights (Amendment) Bill, 2018</th>
<th>Government Bill</th>
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<td>The Bill amends the Protection of Human Rights Act, 1993. The Act of 1993 allows only an ex-CJI to become chairperson of NHRC. The Bill amends this to allow the same for any ex-judge of the Supreme Court. Similar provisions have been added for SHRCs and High Court judges. The Bill reduces the term of office from 5 to 3 years or till the age of 70 years whichever is earlier. It also allows for the reappointment of chairpersons of the NHRC and SHRCs. The Bill amends the 1993 Act to increase the number of members to be appointed from two to three, of which at least one will be a woman. Under the Act, chairpersons of various commissions such as the National Commission for Scheduled Castes, National Commission for Scheduled Tribes, and National Commission for Women are members of the NHRC. The Bill provides for including the chairpersons of the National Commission for Backward Classes, the National Commission for the Protection of Child Rights, and the Chief Commissioner for Persons with Disabilities as members of the NHRC. The Bill amends the provision for delegation and allows the Secretary-General and Secretary to exercise all administrative and financial powers (except judicial functions), subject to the respective chairperson’s control. The Bill provides that the central government may confer on a SHRC human rights functions being discharged by Union Territories. Functions relating to human rights in the case of Delhi will be dealt with by the NHRC.</td>
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<th>The Personal Laws (Amendment) Bill, 2018</th>
<th>House of Introduction: Lok Sabha</th>
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<td>The Bill seeks to amend five Acts. These are: (i) the Divorce Act, 1869, (ii) the Dissolution of Muslim Marriage Act, 1939, (iii) the Special Marriage Act, 1954, (iv) the Hindu Marriage Act, 1955, and (v) the Hindu Adoptions and Maintenance Act, 1956. These Acts contain provisions related to marriage, divorce, and separation of Hindu and Muslim couples. Each of these Acts prescribe leprosy as a ground for seeking divorce or separation from the spouse. The Bill seeks to remove this as a ground for divorce or separation.</td>
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<th>House of Introduction: Lok Sabha</th>
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<td>Referred to Standing Committee: No</td>
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<td>Pending in the originating house.</td>
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<tr>
<td>The Representation of the People (Amendment) Bill, 2017</td>
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<td>The National Commission for Backward Classes (Repeal) Bill, 2017</td>
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<tr>
<td>The Constitution (One Hundred and Twenty-third)</td>
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**House of Introduction:** Lok Sabha  
**Passed** by Lok Sabha  
**Pending** in the Rajya Sabha.
| Amendment) Bill, 2017 as passed by Rajya Sabha and further amended by Lok Sabha Government Bill | Castes, backward classes and Anglo-Indians. The Bill seeks to remove the power of the NCSC to examine matters related to backward classes. The NCBC is a body set up under the National Commission for Backward Classes Act, 1993. It has the power to examine complaints regarding inclusion or exclusion of groups within the list of backward classes, and advise the central government in this regard. The Bill seeks to establish the NCBC under the Constitution, and provide it the authority to examine complaints and welfare measures regarding socially and educationally backward classes.

The Constitution Amendment Bill states that the President may specify the socially and educationally backward classes in the various states and union territories. He may do this in consultation with the Governor of the concerned state. However, a law of Parliament will be required if the list of backward classes is to be amended.

Under the Constitution Amendment Bill, the NCBC will comprise of five members appointed by the President. Their tenure and conditions of service will also be decided by the President through rules.

Under the Constitution Amendment Bill, the duties of the NCBC will include: (i) investigating and monitoring how safeguards provided to the backward classes under the Constitution and other laws are being implemented, (ii) inquiring into specific complaints regarding violation of rights, and (iii) advising and making recommendations on socio-economic development of such classes. The central and state governments will be required to consult with the NCBC on all major policy matters affecting the socially and educationally backward classes.

The NCBC will be required to present annual reports to the President on working of the safeguards for backward classes. These reports will be tabled in Parliament, and in the state legislative assemblies of the concerned states.

Under the Constitution Amendment Bill, the NCBC will have the powers of a civil court while investigating or inquiring into any complaints. These powers include: (i) summoning people and examining them on oath, (ii) requiring production of any document or public record, and (iii) receiving evidence. | Referred to Standing Committee: No Passed |
| The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018 | The Commercial Courts Act, 2015 provides for commercial courts and commercial divisions of high courts to adjudicate commercial disputes with a value of at least Rs one crore. The Bill reduces this limit to Rs three lakh.

The Bill allows state governments to establish commercial courts at the district level, even in territories where high courts have ordinary original civil jurisdiction.

In areas where high courts do not have original jurisdiction, state governments may set up commercial appellate courts at the district level to consider appeals from commercial courts below the level of a district judge. | House of Introduction: Lok Sabha
Referred to Standing Committee: No
Passed |
| --- | --- | --- |
| The Motor Vehicles (Amendment) Bill, 2017, as passed by Lok Sabha and as reported by the Select Committee of Rajya Sabha | The Bill amends the Motor Vehicles Act, 1988 to address issues such as third-party insurance, regulation of taxi aggregators, and road safety.

Under the Act, the liability of the third-party insurer for motor vehicle accidents is unlimited. The Bill caps the maximum liability for third party insurance in case of a motor accident at Rs 10 lakh in case of death and at Rs five lakh in case of grievous injury.

The Bill provides for a Motor Vehicle Accident Fund which would provide compulsory insurance cover to all road users in India for certain types of accidents.

The Bill defines taxi aggregators, guidelines for which will be determined by the central government.

The Bill also provides for: (i) amendment of the existing categories of driver licensing, (ii) recall of vehicles in case of defects, (iii) protection of good Samaritans from any civil or criminal action, and (iv) increase of penalties for several offences under the 1988 Act. | House of Introduction: Lok Sabha
Passed by RS, Sent back to LS |
| The Ancient Monuments and Archaeological Sites and Remains (Amendment) Bill, 2018, as passed by Lok Sabha | The Bill seeks to amend the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

The Act defines a ‘prohibited area’ as an area of 100 meters around a protected monument or area. The central government can extend the prohibited area beyond 100 meters. The Act does not permit construction in such prohibited areas, except under certain conditions. The Act also prohibits construction in ‘prohibited areas’ even if it is for public purposes. | House of Introduction: Lok Sabha
Discussion Deferred |
| Government Bill | The Bill amends this provision to permit construction of public works in ‘prohibited areas’ for public purposes.  

The Bill introduces a definition for ‘public works’, which includes the construction of any infrastructure that is financed and carried out by the central government for public purposes. This infrastructure must be necessary for public safety and security and must be based on a specific instance of danger to public safety. Also, there should be no reasonable alternative to carrying out construction in the prohibited area. |
|---|---|
| The Specific Relief (Amendment) Bill, 2018, as passed by Lok Sabha | The Bill seeks to amend the Specific Relief Act, 1963. The Act sets out the remedies available to parties whose contractual or civil rights have been violated. The Act sets out two main remedies to a party whose contract has not been performed: (i) the party may ask the court to compel performance of the contract (specific performance); or (ii) the party may seek monetary compensation instead of performance.  

Under the Act, specific performance is a limited right, which may be given by the court at its discretion, in the following circumstances: (i) when monetary compensation is inadequate; or (ii) when monetary compensation cannot be easily ascertained. The Bill seeks to remove these conditions and permit specific performance by courts as a general rule.  

The Act contains a list of persons (i) who may seek specific performance and (ii) against whom specific performance may be sought. This list includes: (i) a party to the contract; or (ii) a company resulting from the amalgamation of two existing companies. The Bill adds a new entity to the list of parties. It now includes a limited liability partnership (LLP) formed from the amalgamation of two existing LLPs, one of which may have entered into a contract before the amalgamation.  

The Bill gives an affected party (i.e. a party whose contract has not been performed by the other party) the option to arrange for performance of the contract by a third party or by his own agency (substituted performance). The affected party has to give a written notice of at least 30 days before obtaining such substituted performance. The costs in connection with such performance may be recovered from the other party. After obtaining substituted performance, specific performance cannot be claimed. |
| House of Introduction: Lok Sabha  
Passed by both Houses |
Under the Act, courts can grant preventive relief (injunctions) to parties. The Act provides circumstances in which injunctions cannot be given, for example, to stop a party from filing a complaint in a criminal matter. The Bill additionally seeks to prevent courts from granting injunctions in contracts related to infrastructure projects, if such an injunction would hinder or delay the completion of the project.

These projects can be categorized under the following infrastructure sectors and their sub-sectors: (i) transport; (ii) energy; (iii) water and sanitation (iv) communication (such as telecommunication); and (v) social and commercial infrastructure (such as affordable housing). The central government may amend the list through notification.

Under the Bill, certain civil courts may be designated as Special Courts by the state government, in consultation with the Chief Justice of a High Court. These courts will deal with cases related to infrastructure projects. Such cases must be disposed off within 12 months from the date of receipt of summons by the defendant. This period can be extended by the courts for another six months.

The Act permits the following persons to file a suit for recovery of possession of immovable property: (i) a person put out of possession (dispossessed person); and (ii) any person claiming through such dispossessed person. The Bill additionally permits a person through whom the dispossessed got possession of the immovable property, to file a suit for recovery.

The Bill inserts a new provision for engaging technical experts in suits where expert opinion may be needed. The court will determine the terms of payment of such expert. The payment will be borne by both the parties.

<table>
<thead>
<tr>
<th>The National Council for Teacher Education (Amendment) Bill, 2017</th>
<th>The Bill amends the National Council for Teacher Education Act, 1993. The Act establishes the National Council for Teacher Education (NCTE). The NCTE plans and co-ordinates the development of the teacher education system throughout the country. It also ensures the maintenance of norms and standards in the teacher education system. Key features of the 2017 Bill include:</th>
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<tbody>
<tr>
<td>Government Bill</td>
<td>The Bill seeks to grant retrospective recognition to institutions: (i) notified by the central government, (ii) funded by the central government or state/union territory government, (iii) which do not have recognition under the Act, and (iv) which must have offered</td>
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House of Introduction: Lok Sabha Passed by Lok Sabha, Discussion not concluded in Rajya Sabha
teacher education courses on or after the establishment of the NCTE until the academic year 2017-2018.

The Bill also seeks to grant **retrospective permission** to start a new course or training in teacher education to institutions: (i) notified by the central government, (ii) funded by the central government or state/union territory government, (iii) which have satisfied certain conditions required for the conduct of a new course or training in teacher education, and (iv) which must have offered teacher education courses on or after the establishment of the NCTE until the academic year 2017-2018.

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<tr>
<th>The Prevention of Corruption (Amendment) Bill, 2013, as reported by the Select Committee of Rajya Sabha</th>
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<tr>
<td><strong>The Prevention of Corruption (Amendment) Bill, 2013, as reported by the Select Committee of Rajya Sabha</strong></td>
<td>The Bill seeks to amend the Prevention of Corruption Act, 1988. The Act covers the offence of giving a bribe to a public servant under abetment. The Bill makes specific provisions related to giving a bribe to a public servant, and giving a bribe by a commercial organisation. The Bill redefines criminal misconduct to only cover misappropriation of property and possession of disproportionate assets. The Bill modifies the definitions and penalties for offences related to taking a bribe, being a habitual offender and abetting an offence. Powers and procedures for the attachment and forfeiture of property of public servants accused of corruption have been introduced in the Bill. The Act requires prior sanction to prosecute serving public officials. The Bill extends this protection to former officials. The Bill makes giving a bribe a specific offence. There are diverging views on whether bribe giving under all circumstances must be penalised. Some have argued that a coerced bribe giver must be distinguished from a collusive bribe giver. The Bill has deleted the provision that protects a bribe giver from prosecution, for any statement made by him during a corruption trial. The Bill has replaced the definition of criminal misconduct. It now requires that the intention to acquire assets disproportionate to income also be proved, in addition to possession of such assets. By redefining the offence of criminal misconduct, the Bill does not cover circumstances where the public official: (i) uses illegal means, (ii)</td>
</tr>
<tr>
<td><strong>House of Introduction Rajya Sabha</strong></td>
<td><strong>Passed by both Houses</strong></td>
</tr>
</tbody>
</table>
abuses his position, or (iii) disregards public interest and obtains a valuable thing or reward for himself or another person.

Under the Act, the guilt of the person is presumed for the offences of taking a bribe, being a habitual offender or abetting an offence. The Bill amends this provision to only cover the offence of taking a bribe.

| The Fugitive Economic Offenders Bill, 2018 | The Bill allows for a person to be declared as a fugitive economic offender (FEO) if: (i) an arrest warrant has been issued against him for any specified offences where the value involved is over Rs 100 crore, and (ii) he has left the country and refuses to return to face prosecution. To declare a person an FEO, an application will be filed in a Special Court (designated under the Prevention of Money-Laundering Act, 2002) containing details of the properties to be confiscated, and any information about the person’s whereabouts. The Special Court will require the person to appear at a specified place at least six weeks from issue of notice. Proceedings will be terminated if the person appears. The Bill allows authorities to provisionally attach properties of an accused, while the application is pending before the Special Court. Upon declaration as an FEO, properties of a person may be confiscated and vested in the central government, free of encumbrances (rights and claims in the property). Further, the FEO or any company associated with him may be barred from filing or defending civil claims. |
| House of Introduction Lok Sabha Passed by both Houses |
The Bill does not require the authorities to obtain a search warrant or ensure the presence of witnesses before a search. This differs from other laws, such as the Code of Criminal Procedure (CrPC), 1973, which contain such safeguards. These safeguards protect against harassment and planting of evidence.

The Bill provides for confiscation of property upon a person being declared an FEO. This differs from other laws, such as CrPC, 1973, where confiscation is final two years after proclamation as absconder.

**The Requisitioning and Acquisition of Immovable Property (Amendment) Bill, 2017**

The Bill amends the Requisitioning and Acquisition of Immovable Property Act, 1952.

The 1952 Act provides for the central government to requisition immovable property (or land) for any public purpose. Such public purpose must be a purpose of the central government (such as defence, central government offices and residences). Once the purpose for which the property was requisitioned is over, it must be returned back to the owner in as good a condition as when the possession was taken.

The central government may acquire such requisitioned property in two cases which are: (i) if the central government has constructed any work at such property, and the right to use such work must be with the government; or (ii) if the cost of restoring the property to the original condition would be excessive, and the owner refuses to accept the property without being compensated for restoring the property.

The Bill will be deemed to have come into force on March 14, 1952, the date of the enactment of the Act.

Under the Act, when acquiring a requisitioned property, the central government has to issue a notification with regard to such an acquisition. Before issuing such notice, the government has to provide the property owner (or any person claiming compensation on the property) an opportunity to be heard. The property owner at such hearing will have to provide reasons for why the property should not be acquired. The Bill provides that the government may re-issue the acquisition notice to the property owner (or a person interested in the property) to give them adequate opportunity for a hearing. This would be irrespective of any past court orders or judgments setting aside any
past notices for acquisition. However, the re-issue of notice will not apply to cases where the compensation has already been awarded and accepted by the claimants. In cases where a notice has been re-issued, the property owner (or a person interested in the property) will be entitled to an interest on the compensation payable to them. The interest will be calculated for the period from when the first notice was issued till the date of the final payment of compensation. This interest will be the same as the annual rate of interest, prevalent at any relevant time, on the domestic fixed deposit offered by the State Bank of India.

The Bill provides that such enhanced compensation will be awarded only if: (i) the acquisition notice has been re-issued, and (ii) the land is being acquired for the purpose of national security and defence.

<table>
<thead>
<tr>
<th>The State Banks (Repeal and Amendment) Bill, 2017</th>
<th>The Bill seeks to repeal the two Acts: (i) State Bank of India (Subsidiary Banks) Act, 1959, and (ii) State Bank of Hyderabad Act, 1956. These Acts established the State Bank of Bikaner, State Bank of Mysore, State Bank of Patiala, State Bank of Travancore, and State Bank of Hyderabad. These banks were subsidiaries of the State Bank of India (SBI). This is consequent to the Union Cabinet granting its approval in February 2017, which allowed the SBI to acquire these subsidiaries. The Bill seeks to amend the State Bank of India Act, 1955 to remove references related to subsidiary banks. These references include: (i) the definition of a subsidiary bank in the 1955 Act, and (ii) powers of SBI to act as an agent of the RBI for a subsidiary bank.</th>
<th>House of Introduction Lok Sabha Passed by Both Houses</th>
</tr>
</thead>
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<tr>
<th>The Right of Children to Free and Compulsory Education (Second Amendment) Bill, 2017</th>
<th>The Right to Education Act, 2009 prohibits detention of children till they complete elementary education i.e., class 8. The Bill amends this provision to state that a regular examination will be held in class 5 and class 8 at the end of every academic year. If a child fails the exam, he will be given additional instruction, and will take a re-examination. If he fails in the re-examination, the relevant central or state government may decide to allow schools to detain the child.</th>
<th>House of Introduction Lok Sabha Passed by Lok Sabha</th>
</tr>
</thead>
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Note: Following sources were used to write the summaries of various bills mentioned above:
POLICY ENGAGEMENTS
SCOPING PAPER ON HOUSING

Research Agenda for Policy Area Concentration-Urbanization
The Policy Area Concentration (PAC) on Urbanization engages with what is marked as a development goal for countries- of expanding the urban process. However, the spatial dynamics of urbanization, the influence of global or indigenous capital, the nature of jobs and the standard of living it creates, as well as the inequality within it can reveal whether it will lead to the ‘Triumph of the City’ or a ‘Planet of Slums’. Public policies play a central role in determining the shape and nature of urbanization.

The Policy Area Concentration is developed in the program through three courses and a research theme. The student-led research programmes are an offshoot of the PACs offered by the school. Having chosen their PACs based on their interest in research and policy, students write a field-based research dissertation. The research theme for the PAC Urbanization for 2018-19 is on Housing in India.

Housing is a basic human need without which the quality of human life would be negatively affected. However, in modern times, the demand for housing in urban areas is outstripping the supply. India, even after 70 years of Independence still continues to face the problem of meeting the housing shortages. In India and in many other countries, the governments majorly focus on home ownership rather than on other alternative models. Even though the focus on house ownership has its varied advantages, affordability still continues to be a major issue for the urban poor. Rental housing is seen as an alternative solution as it provides the scope for both horizontal (movement across cities) and vertical (movement across the class) mobility, without tying the households to a fixed space.

This paper is divided into six chapters; chapter one is an introductory note extensively dealing with the history of housing policies in independent India and its development. Chapters two to five, reviews the existing literature on different aspects of the housing to understand the current scenario, identify gaps and infer from the global practices. The last chapter is the agenda, which lays the prospective ambit for future exploration with rental housing as a possible policy alternative.

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To read, click here
Data Protection Policy

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Introduction:
Some of the key technologies which will drive the economies in future are Artificial intelligence (AI), Big data and Internet of Things, and Data is the fuel that powers them. The prospect of data use in a digital economy has immense benefit for citizens, but at the same time, the potential for discrimination, exclusion, identity theft and profiling is equally likely. The recent case of Cambridge Analytica is demonstrative of several such harms. The AI task force constituted by the Ministry of Commerce and Industry repeatedly stressed in its report the need to have better, and more effective data protection policies as a precursor to encouraging any form of data sharing. It said (2018), “the most important challenge in India is to collect, validate, standardize, correlate, archive and distribute AI-relevant data and make it accessible to organizations, people and systems without compromising privacy and ethics.” (p.9)

Objective of Government:
In Justice K.S. Puttaswamy (Retd.) vs. Union of India, right to privacy was recognized as a fundamental right. Hence, it is the duty of the state to put in place a data protection framework which, while protecting citizens from dangers to informational privacy originating from state and non-state actors, serves the common good. As is said in the report of Data protection (2018), “to unlock the data economy, while keeping data of citizens secure and protected.” (p.5)

International Approaches:
The framework for data protection of different countries is based on the locational understanding of the relationship between citizens and the state. In the United States, the constitutional understanding of liberty as freedom from state control is reflected in its laissez-faire approach to design of data protection where data handled by private entities is regulated and obligation to protect data is primarily on the state. The European Union recently enacted the General Data Protection Regulation that lays down the fundamental norms to protect the privacy of Europeans. Data protection norms are founded on the need to uphold human dignity, and privacy is central to human dignity. The state is viewed as having a responsibility to protect such individual interests. China, which frames its laws with the interests of the collective as the focus, has approached the issue of data protection primarily from the perspective of averting national security risks.

Normative Framework of Indian Approach:
Indian approach is ensuring the protection of personal data and facilitating the growth of the digital economy as they serve common constitutional objectives of individual autonomy, dignity and self-determination. As the Data protection report (2018) says:
Each of them (privacy concern and economic interest) is motivated by distinct intermediate rationales — the former ensuring the protection of individual autonomy and consequent harm prevention and the latter seeking to create real choices for citizens. Both these intermediate objectives themselves are complementary — individual autonomy becomes truly meaningful when real choice (and not simply an illusory notion of it) can be exercised and likewise no real choice is possible if individuals remain vulnerable. (p.8)
The growth of data-driven digital economy must be equitable, rights-reinforcing and empowering for the citizenry as a whole. To see individuals as an atomized unit, standing apart from the collective, neither flows from our constitutional framework nor accurately grasps the true nature of rights litigation. Importance of data protection is not because of the benefit that
The rights holder gets, rather because that benefit is a public good that society as a whole enjoys. The B.N. Srikrishna Committee report (2018) says: Rights (of which the right to privacy is an example) are not deontological categories that protect interests of atomized individuals; on the contrary, they are tools that as Raz points out, are necessary for the realization of certain common goods. (p.9)

It means rights are not an end in themselves, as individuals are interconnected in the society and not independent. Therefore, rights given to individuals are means to achieve common good. For example, *Right to Education* is a means to bring change in society and not just limited to individual development.

Indian constitution ensures that the state act as a facilitator of human progress. Serving the common good is conceptualized in the Directive Principles of State Policy and the state, being prone to excesses, is also checked by fundamental rights, federal structure and separation of power. By avoiding a trade-off between economy and privacy, Srikrishna Committee is in line with the hazy philosophical foundation of our constitution. It favours individual privacy, and at the same time provides us with a coherent normative basis, where the right to privacy is not a deontological category for an atomized individual, but rather a tool for the good of interconnected individuals.

The graph above helps understand the data policy from different approaches; to simplify the understanding, an indifference curve depicting the combination of Economy and Privacy is used. The curve representing American Approach is a flatter curve placed on Y-axis which represents the importance of Economic gain over Individual privacy concern whereas the curve representing European Approach is steep and placed on X-axis which represents the importance given to Individual rights. Indian approach as evident from the graph represents both the Economy Interest and Privacy concern and the steepness of the curve represents the preference given to privacy.

**Highlights of the Policy**

**Data Principal & Data Fiduciary:** Principal is the person, company, or entity whose information is being collected. As individual is the focal actor in the digital economy, hence is termed as principal which gives a different sense from Data Subjects, where subjects feel like they are not important and controllers are masters. Fiduciary can be a person, state, company, or any entity that decides why data should be processed and how it should be processed. The Hallmark of a fiduciary relationship is that the personal data of individual will be used fairly, in a manner that fulfils her interest and is reasonably foreseeable.

**Personal Data and Sensitive Data:** The Committee defined personal data to include data from which an individual may be identified or be identifiable, either directly or indirectly.

The Committee sought to distinguish personal data protection from the protection of sensitive personal data, since its processing could result in greater harm to the individual. Sensitive data is related to intimate matters where there is a higher expectation of privacy like passwords, financial data, biometric data, genetic data, caste, religious or political beliefs, or any other category of data specified by the authority.

**Processing of Data:** For processing personal data, consent should be informed or meaningful. For sensitive personal data, a data protection law must sufficiently protect their interests, while considering their vulnerability, and exposure to risks online. Further, sensitive personal information should require explicit consent of the individual. The
Committee noted that it is not possible to obtain consent of the individual in all circumstances. Therefore, the Committee identified four bases for non-consensual processing: (i) where processing is relevant for the state to discharge its welfare functions, (ii) to comply with the law or with court orders in India, (iii) when necessitated by the requirement to act promptly (to save a life, for instance), and (iv) in employment contracts, in limited situations (such as where giving the consent requires an unreasonable effort for the employer).

Data Protection Authority: It is supposed to protect the interests of data principals, prevent misuse of personal data and ensure compliance under the data protection framework by anyone processing personal data. The obligations on data fiduciaries include conducting audits and ensuring they have a data protection officer and grievance redressal mechanism — the Authority will need to publish Codes of Practice on all these points. Orders of the Authority can be appealed to an Appellate Tribunal established by the central government and appeals from the Tribunal will go to the Supreme Court.

Right to be Forgotten: According to this right, data principals will be able to restrict or prevent any display of their personal data once the purpose of disclosing the data has ended, or when the data principal withdraws consent from disclosure of their personal data.

Data Localisation: Personal data will need to be stored on servers located within India, and transfers outside the country will need to be subject to safeguards. Critical personal data, however, will only be processed in India.

Amendments: It recommends amendments to the Information Technology Act, 2000 and Right to Information Act, 2005 to permit non-disclosure of personal information where harm to the individual outweighs public good. The committee has suggested recommendations to the Aadhaar Act, 2016 to ensure autonomy of the UIDAI and bolster data protection.

Debates over Normative Framework

First: In right of privacy judgement, Justice Chandrachud (2017) said, “The individual is the focal point of the constitution because it is in the realization of individual rights that the collective well-being of the community is determined.” (p.94)

Response: Shankar Narayan (2018) in his article argues:
The preamble of the Constitution speaks of a people who value liberty, equality, fraternity and justice. Much like other fundamental rights, the right to privacy is a means to achieve this collective goal of a free and just society.

Second: TRAI recommends that the individual ought to be the owner of her personal data and the entity collecting the data a mere custodian.

Response: Arghya Sengupta (2018) in his article argues, “the committee felt that the interests of the citizen would be better protected were she a data principal rather than a data owner.” He further adds, “After all, data ownership is about using the construct of private property to protect ordinary individuals. Even an elementary understanding of Marx tells us that private property does not work in the interests of such persons. To quote him, ‘Private property has made us so stupid and one-sided that an object is only ours when we have it.’”

Third: According to the article a fundamental error (2018), the report rejected the argument that the right to privacy dissolves in the face of amorphous collective notions of economic development.

Response: Shankar Narayanan (2018) in his article argues,
The committee specifically emphasizes that protecting the autonomy of an individual is critical not simply for her own sake but because such autonomy is constitutive of the common good of the free and fair digital economy. This proposition does not make the crude argument that individual rights are subject to some notion of greater good. Rather, it expresses the view that protecting the autonomy of data principals is critical as it will encourage the flow of information.
References:


Ayushman Bharat

Bharat Sharma
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Objective: Ayushman Bharat also referred to as National Health Protection Scheme, is a new centrally sponsored scheme aimed at providing quality healthcare services to the poor and vulnerable families at affordable rates and reduce their out of pocket expenditure.

Context: Public Health Infrastructure, as well as financing, has remained a neglected subject in India. This is highlighted through the following facts:

- According to the Global Burden of Disease Study, published in The Lancet, India is ranked 154 out of 195 countries regarding health care access, far behind nations like Bangladesh, Nepal, Ghana, and Liberia
  https://thewire.in/health/india-rank-healthcare-index
- Public Health expenditure has remained constant at approximately 1.3% of the GDP during 2008-2014 which is less than the world average of 6% (WHO Global Health expenditure database http://apps.who.int/nha/database/ViewData/Indicators/en)
- Majority of the expenditure is out of pocket which comes out to be 64.2% (Household Health Expenditures in India (2013-14), MoH&FW) during 2013-14 of the total expenditure and is a major reason behind the impoverishment of many poor and low middle-income households.
  https://mohfw.gov.in/sites/default/files/38300411751489562625.pdf
- 86% of the rural population and 82% of the urban population are not covered under any scheme of health expenditure support
- In terms of the number of beds per 1000 population, India ranks among the lowest with a meagre 0.9 beds per 1000 population, significantly trailing the global average of 2.9 beds http://ahpi.in/pages/infrastructureissues.html
- The inadequacy of skilled health personnel and their skewed distribution across urban and rural areas.

Due to changing lifestyle and increasing levels of pollution in the recent years, there has been an epidemiological shift from communicable to non-communicable diseases. But public action for the latter has remained inadequate and there is a huge unmet need for primary health care, namely, care for non-communicable diseases like hypertension, diabetes etc. It is in this context that the Central Government has come out with the National Health Protection Scheme (Ayushman Bharat).

Salient Features:
There are two components of the scheme:

Health and Wellness Centre: Under this, 1.5 lakh Health and Wellness centers will bring health care closer to the homes of the people. These centers will provide comprehensive health care, including for non-communicable diseases, maternal and child health. These centers will also provide free essential drugs and diagnostic services. The contribution of the private sector through CSR and philanthropic institutions in adopting these centers is also envisaged.

National Health Protection Scheme: The scheme will cover 10 crore poor households providing Rs 5 lakh coverage per family per year for secondary and tertiary care hospitalization. The beneficiaries will be selected on the basis of the Social and Economic Caste Census. Cost sharing is to be in the ratio of 60:40 between Centre and States.

Institutional architecture:
- An Ayushman Bharat National Health Protection Mission Agency would be put in place at the national level.
• States have advised implementing the scheme through a dedicated entity called State Health Agency (SHA). States can decide to implement the scheme through an insurance company or directly through a trust or society or use an integrated model.

Certain aspects and proposed benefits of the scheme:
• The insurance cover being offered is substantially superior to other regular medical insurance schemes and most of the previous government insurance schemes like Rashtriya Swasthya Bima Yojana (maximum assured coverage amount was a total of ₹ 30,000).
• The medical cover includes many items hitherto excluded in standard insurance schemes, like pre-existing diseases, mental health conditions among others.
• Product design is simple and easy to administer:
  o Automatic enrolment without filling any form.
  o Coverage for the entire family irrespective of its size.
  o The network of hospitals being created will be larger than what insurers have today.
  o Stringent service-level agreements: a pre-approval is required for all non-emergency cases but if the request is not addressed within 12 hours, then the treatment is considered approved.
  o Cashless treatment with individuals having the option to get treated anywhere in the country.
• Encourages hospitals to maintain certain minimum standards with a provision for 10% higher compensation if they are NABH (National Accreditation Board for Hospitals & Healthcare) accredited and maintain a minimum technology standard.
• It is an entitlement-based scheme which was drafted on the basis of the deprivation criteria in the SEC database.
• Package Rates to be determined by Government for Private Hospitals which would help in keeping the cost of treatment low.
• The scheme may have a positive impact on reducing out-of-pocket expenditure.
• Overall the scheme may lead to timely treatments, improvements in health outcomes, patient satisfaction, improvement in productivity and efficiency, and job creation, leading to an improvement in overall quality of life.

Challenges and Issues:
• States’ ownership and commitment to the scheme will be important for the success of the scheme since health is a state subject and states have to contribute 40% of the funds.
• Possibility of private parties benefiting more than government health services.
• One of the most substantial challenges is for the scheme to be economically sustainable. This will depend on the package rates determined by the government.
• Given the high levels of Information asymmetry and lack of effective regulation of the private sector, the consumption of services is more determined by what private sector providers find profitable rather than the actual health care needs of the poor.
• The funds allocated for the scheme are grossly inadequate. The allocation of Rs 2000 crore to cover 5 crore households amounts to barely Rs 80 per head per year. Also, the funds allocated for the Health and Wellness centers are wholly inadequate.
• The scheme would be overlapping with many state health insurance schemes like Aarogyasri of Andhra Pradesh government.
• The scheme doesn't deal with preventive, promotive and outpatient care, so it may not lead to larger public benefits.
• Most critical issues still remain, such as, the limited and uneven distribution of human resources at various levels of health services, with up to 40 percent of health worker posts lying vacant in some states. Most primary health care centers suffer from the perennial shortage of doctors and even district hospitals are without specialists. Also, the issue of infrastructure which includes hospital beds.
Recommendations:

- To maximize benefits, there is a need to establish a link among various health initiatives announced in the budget and also with related programmes such as the National Health Mission.
- Need for uniform pricing systems for various health interventions, including diagnostics and medicines, and making them transparent by displaying them in hospital premises.
- Clarity is needed as regards to what services will be provided by government health facilities, which conditions will require patients to use private parties and what mechanisms are being thought of.
- For states having already established insurance programmes, the NHPS can supplement them instead of wholly replacing them.
- Need to draw up a strategy for negotiating prices being charged for the services.
- Focus should be on having greater community participation in the planning and implementation of the programme. Also, the Health and Wellness Centres should be responsive to the needs of the community as a whole.
- Scientific planning of the manpower for the healthcare including doctors, paramedics to address their shortage and the skewed distribution. The government should come out with a separate policy for this.
- There are about 1.5 million hospital beds in the country. These cannot support the 500 million people who will have insurance. Thus, there is need to build capacity.
- Additional budgetary allocation for the Health and Wellness Centres is required. For this, the public expenditure needs to be increased to 2.5% of GDP, as has been mentioned in the National Health Policy 2017.
- Finally, the focus should be towards bringing about wholesome reform in the Health sector through governance reforms and better enforcement of the regulations.

References:


Sharma, K. (2017, December 9). *To fix India’s flailing public health system, health sub-centres need to be improved first.* Retrieved September 15, 2018, from www.scroll.in: https://scroll.in/pulse/860772/flailing-public-health-services-too-many-health-sub-centres-have-no-water-electricity-or-manpower


Rare disease treatment Policy

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The discourse on rare diseases
The National Policy for Treatment of Rare Diseases, a preliminary but comprehensive document to understand the issues surrounding rare diseases and their status in India, was released in the previous year by the Ministry of Health and Family Welfare. Let us understand the case for rare diseases and the causes behind the framing of this policy.

Could a welfare state argue in terms of differing treatment costs as well as the difference in the number of people addressed/treated for investing on one public health concern over the other? A number of judgments in the past have pressed upon the concerned state governments and central government to move over the above trade-offs in light of treatment provision for rare diseases.

The Manoj M vs State of Kerala (2016) case invoked the above idea of the constitutionally envisioned welfare state being obligated to protect the right to life of citizens by provisioning (not necessarily providing) medical treatment if individuals cannot afford it on their own. Here, the petitioner’s son had Pompe disease (a type of Lysosomal Storage Disorder, a genetic disorder whose treatment would cost nearly ₹ 43 lakh annually and was till then being supported through a charitable initiative by the concerned drug’s manufacturer, Genzyme. The initiative was about to be withdrawn by Genzyme which would have led to the discontinuation of his treatment and ultimately his death. This made the petitioner approach the state government, the National Human Rights Commission, his Chief Minister and ultimately the court.

The Mohd. Ahmed (Minor) vs Union of India & Ors. (2014) judgment, one of the watershed cases, provides another account of the uncertainty of access to drugs, the costliest part of the treatment, surfacing on a monthly basis. The petitioner had been diagnosed with another one of rare genetic disorders viz. Gaucher disease whose treatment cost was estimated at ₹ 6 to 7 lakh per month. The judgment details how the petitioner’s family, belonging to the economically weaker section, was at the mercy of donations by various actors, a private hospital in Haryana, the concerned drug’s manufacturing company and lawyers of the Delhi High Court, in the initial period of the drug therapy (Enzyme Replacement Therapy). Although the government had argued against the provision of free treatment in this case because of financial constraints (just as in the previous case) and for deciding on assistance in the future on a case by case basis, the court directed the NCT of Delhi to provide the said treatment to the minor for free and thereby adhere to the provisions of Articles 14 and 21 of the Constitution. In a socio-economic study conducted in eight cities of India on the rare bleeding disorder, haemophilia, Gupta, Dutta & Sengupta (2018) too supply evidence regarding persons with haemophilia and their families being dependent on the government and voluntary organizations for leading a “healthy daily life”. (p. 44).

The above are three of the rare diseases that have undergone clinical study along with the development of their diagnosis and treatment. They are referred to as rare diseases because of their relatively low prevalence, and have been recognized as a public health concern in India. A policy for the treatment of these diseases has recently been framed by the Ministry of Health and Family Welfare, under the directions of the Delhi High Court which had been handling twelve other cases in this matter; families of individuals diagnosed with these diseases have been seeking legal recourse for several years to finance treatment.

Although a definition for these diseases has not been standardized, the diseases have been defined on the basis on their prevalence (which could be as low as 0.4% of the country’s population as has been defined in Japan), the ability to study them, whether they are life-threatening or not, and so forth. (Gol, 2017). Defining rare diseases is one of the short-term policy goals for India as there is a lack of epidemiological data on these diseases presently.
Here, the author has attempted to draw out the reported cases of rare bleeding disorders by using the 71st round of the National Sample Survey on healthcare consumption (Table 1). Although the survey does not explicitly reveal information on rare diseases, there is an attempt to record blood disorders such as haemophilia, sickle-cell disease and thalassemia within the ailment groups of anaemia and bleeding disorders in the survey.

Table 1: Reported cases of blood diseases for which medical treatment was received in a one-year period

<table>
<thead>
<tr>
<th>Ailment group (blood diseases) *</th>
<th>Frequency</th>
<th>Percentage share</th>
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</thead>
<tbody>
<tr>
<td>Anaemia (any cause)</td>
<td>675</td>
<td>78.22</td>
</tr>
<tr>
<td>Bleeding disorder</td>
<td>188</td>
<td>21.78</td>
</tr>
</tbody>
</table>

*The two ailment groups defined for the 71st round of the NSS include the following diseases: Anaemia: Reported diagnosis of sickle-cell disease, any other cause of anaemia with a reported diagnosis e.g., iron deficiency anaemia, thalassemia. Bleeding disorders include reported diagnosis or a history of recurrent frequent bleeding after even minor injuries or from one nasal passage or the other constituting bleeding disorders, haemophilia etc.

It is necessary to note that this information is not indicative of the prevalence of the diseases and the medical expenditure and free treatment heads do not offer any unusual information on treatment expenditures or financing. Although rare, these bleeding disorders are not included in the corpus set aside as part of the bleeding diseases policy because other government programs are in place for them, and research and advocacy groups have also attempted to address these disorders (Kar, Phadnis, Dharmarajan, & Nakade, 2014). In spite of the attention paid to these disorders, the missing robustness in data serves as an indicator of the dearth of information in the area of rare diseases. Now, it is important to highlight why these less prevalent diseases have become a public health issue. As per the judgments and the policy document, it is clear that the root of the problem is the low prevalence and life-threatening nature of these mainly genetic disorders.

Firstly, the low prevalence has contributed to the paucity of clinical studies leading to diagnosis and treatment complexities, and to the exorbitant cost of research and development (R&D) of drugs in this area (details for the same provided in the next section). Added to this is the requirement of “tertiary-level management involving long-term care and rehabilitation” (GoI, 2017, p. 3) whose expenses are out of reach for most families because of the ‘prohibitive’ cost of drugs. Lastly, and importantly, each disease’s individual rarity sits against the relatively significant proportion of the population that they affect collectively (there are nearly 7,000 classified rare diseases globally and affecting 6-8% of a country’s population as per estimates) (2017; Muthyala, 2018).

This is posing a challenge to the public health financing system as the per-person (life-long) cost of treatment for these diseases can instead be spent on medical infrastructure that would benefit a much larger pool of individuals. The D.K. Tempe Committee Report highlights this issue of resource allocation in a detailed manner. Even in the Manoj M vs State Of Kerala (2016) case, the state government had argued that it would not be able to provide free treatment to individuals with Lysosomal Storage Disorder (LSD) because the treatment of 15 individuals per year (as per their estimation of LSD’s prevalence) would take up half of the allocation for the purchase of essential drugs by government hospitals in the state i.e. about 150 crore INR in the coming 18 years.

The market contention
Essentially, the rarity of the diseases has (logically) implied their limited study (gathering of samples, conduct of clinical trials etc. is very difficult) and the resultant development and sale of drugs has become excessively expensive. Added to the cost of R&D is the absence of scale economies; these reasons keep the unit cost of a drug “prohibitively high” (Government of India, 2017, p. 4).

Such a situation where both the number of ‘buyers’ of the product as well as the producers is few presents a unique (monopoly or oligopolistic (Fellows & Hollis, 2013)) market condition. This is because the few ‘buyers’ of the drug treatment here are not able to exercise power to guide prices, proposing a challenge for financing the production and pricing of
these drugs. It is important to note the regulatory mechanisms and/or drug provisioning models followed by other countries. Countries such as the U.S., Australia, E.U. and several Asian states (Japan, Taiwan, South Korea and China) have developed R&D incentivizing regulatory institutions such as exclusive marketing rights, subsidies, tax credits, assistance in meeting protocols etc. (Song, Gao, Inagaki, Kokudo, & Tang, 2012, p. 3; Gol, 2017).

This implies that for a pool of buyers who do not have the bargaining power, state intervention in terms of production and provision could potentially even out cost inefficiencies. In fact, one of the long-term measures identified in the policy is to encourage public sector undertakings (PSUs) to produce drugs for rare diseases locally.

Concluding remarks
In addition to the development of appropriate drug manufacture-and-sell financial models, the author calls for a critical analysis of activities undertaken by drug manufacturers for these diseases such as the provision of free drugs for treatment of children for a few months. Evidence for these other-regarding activities of the drug manufacturers is available in various relevant judgments, as also their influence on policy. Such an analysis, but in a very different context, has been undertaken by Kucab, Stepanyan and Fugh-Berman (2016) to detail drug companies building a direct relationship with haemophilia patients. Apart from existing players, more pharmaceutical companies are increasingly finding ‘orphan drugs’ as heavy revenue drivers as compared to the production of high prevalence ‘blockbuster drugs,’ (national regulatory mechanisms only strengthening the incentives) which has both positive and negative implications (Sharma, Jacob, Tandon & Kumar, 2010; Jack, 2017).

References:
Cases
Mohd. Ahmed (Minor) vs Union of India & Ors., Writ Petition (C) 7279/2013 (2014, April 17)
COURT JUDGMENTS
Right to Privacy in India

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TISS - Hyderabad

Introduction:
The privacy debate in India gained traction after events that gained the attention of the legal practitioners and the civil society – the 2010 petition by the Tata Group to the Supreme Court for a violation of the fundamental right to privacy, after the leak of the Nira Radia tapes; and, the 2015 claim of the Attorney General, while defending the Aadhaar project, stating that Indians have no right to privacy. It is necessary to acknowledge that many national programmes such as Aadhaar, National Intelligence Grid, DNA profiling and State DNA Banks, privileged communication, and Crime Tracking Network and Systems, that are being implemented by the government raises serious concerns of privacy among individual citizens since India has no data protection laws or a regulatory agency to look into excesses committed by the State with the use of private data. All these concerns where somewhat addressed a nine-judge bench of the Supreme Court in 2017 when it recognized the “Right to Privacy” as a fundamental right that is implicit in Article 21 of the Indian Constitution. While delivering the verdict, the bench over-ruled the preceding eight judge bench judgement in the MP Sharma case and the six-judge bench judgement in the Kharak Singh case – both these cases held that privacy was not a fundamental right but recorded observations on the limitations of the State while infringing personal liberty and personal freedom while exercising reasonable restriction on privacy for a superior and countervailing good.

The Judgement:

The arguments:
The nine-judge bench, headed by the then Chief Justice JS Khehar, dwelled on the question of whether Aadhaar, the biometric identification system managed by the State, infringed on the Right to Privacy. The limited question for the bench was to determine if the right to privacy was a fundamental right or not. In some of the major arguments put forth, the counsels in the Supreme Court noted that privacy should not be viewed as an implication of a fundamental right but as an inalienable right that was fundamental to the construction of the constitution. The argument also expanded that privacy would include bodily integrity, personal autonomy, protection from state surveillance, and freedom of dissent.

On July 26, 2017, the counsel appearing on behalf of the Central Government of India proclaimed that though privacy was a fundamental right under the Constitution, it could not be extended to every aspect of privacy. The Additional Solicitor General, appearing on behalf of UIDAI, clarified that privacy was an important common right and was duly protected under statutes – it did not need to be elevated to the status of a fundamental right.

The observations of the judges:
After hearing counsels appearing for both sides, the nine-judgement concluded that:

1. Fundamental rights are the only constitutional safe-guards to prevent State’s encroachment of core freedoms pertaining to individual liberty.

2. The Right to Privacy is vividly implicit in the expression and meaning of Article 21 of the Constitution.

3. Many activities can only be performed with dignity if an individual is “left-alone”, there is a need to ensure such dignity under the Right to Life – as it implies a life of dignity and not merely an animal existence.

4. The Centre’s argument of privacy being protected by statutes was disregarded as it was observed that statutes can be made and
also unmade by Parliamentary majority. This leaves the privacy to be subject of convenience for the majority in Parliament that may revoke statutory safe-guards if it deems it convenient for its vested interests. On the other hand, fundamental rights may be enjoyed by the citizens despite of the governments that they may elect.

5. The bench also noted that the Right to Privacy is not an “absolute right” and can be subject to certain reasonable restrictions.

6. The SC also observed that privacy is the constitutional core of human dignity. It ensures the fulfilment of human dignity and is therefore an inviolable and inalienable right.

Conclusion:
In the technological transgression that India has now endeavoured – a movement towards a “Digital India”, algorithms, and the use of artificial intelligence for data analysis, data manipulation, and autonomous decision-making programmes – it would be interesting to note how the Indian judiciary interprets the right to privacy and apply it to new technological innovations such as facial recognition and DNA profiling. The implications of this judgement impact many areas of societal interests – including broader implications in domains of gender and sexuality, dignity, State surveillance, and data protection. It would be interesting to observe how the judiciary engages with “reasonableness” of the reasonable restrictions that may allow the State to transgress or restrict this Constitutional right.
Introduction

The Delhi High Court’s recent landmark judgement, delivered on August 8, 2018 by a bench of Acting Chief Justice Gita Mittal and Justice C Hari Shankar, strikes down the judicial validity of the Bombay Prevention of Begging Act, 1959 (except Section 11 of the Act) within the jurisdiction of National Capital Territory of Delhi. The ruling was based on two public interest litigations filed by Harsh Mander and Karni ka Sawhney on the basis that criminalization of beggary violates the Fundamental Rights as guaranteed by the Constitution through Article 14, 19, 20, 21 and 22. This judgement is a watershed moment in not only defining the legal perspective on human rights but also understanding the triad role of judiciary, civil society and state mechanisms in its mission to deliver sustainable change. In its action of decriminalising begging, the judiciary has invoked “constitutional conscience” by viewing poverty as a human rights issue which emerges out of structural reasons and not choice. Hence, this activist court places the onus on the State by stating that it is part of the social contract that the State secure and advance the life of its citizens rather than simply invisibilizing the consequences of inequality and homelessness.

Debate on the issue: Perspectives of the petitioners (Harsh Mander and Karnika Sawhney) and the respondents (Standing Counsel, Govt. of India.)

The writ petitions challenged the constitutionality of all the sections of the Bombay Prevention of Begging Act, 1959 excepting Section 11 of the same. While no central law on begging and destitution exists, several States have either adopted the aforementioned Act or modelled their State specific laws around it with Delhi government having adopted in 1970s. Briefly, the Act defines “Begging” within Section 2(1) (i). Section 4(1) gives the police power to arrest the beggar without a warrant. The provision for court enquiry following which the person may be detained in a certified institution has been detailed in Section 5. Section 6 deals with the punishment for a person who has been declared a repeat offender under this Act. Section 11 is strikingly important as it shifts the onus of beggary from the beggar and instead provides
a penalty for employing or causing persons to beg or using them for the purpose of begging. On the basis of the writ petitions submitted, a counter affidavit was filed by the Standing Counsel, Government of India which made a distinction between begging out of reasons emerging of poverty and that out of choice. Nevertheless, it stated that to ascertain the actual cause, it is necessary to detain thereby warranting the detention of beggars. On the other hand, the petitioners based their argument on the basis that this Act violates the Fundamental Rights on several counts. With respect to the definition of begging, it goes against Article 14 (Right to Equality) as it does not demarcate between persons who solicit or receive money for authorized purposes and those who are singing, dancing, or engaged in similar activities. In an interesting interpretation of Article 19 (1) (a) (Freedom of speech and expression), criminalising soliciting goes against the right to express one’s poverty and vulnerability. Additionally, viewing beggary as a criminal activity is in contrast to Article 21 (Right to Life) as it deprives the individual opportunities to obtain basic necessities of life, even if it is through begging. Furthermore, the application of the Act has been applied in an arbitrary manner as it clubs homeless persons, people working in the informal sector within the category of beggars and charges them with similar punishment.

### Selected clauses of the Bombay Prevention of Begging Act, 1959

<table>
<thead>
<tr>
<th>Clause</th>
<th>Statutory provisions</th>
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<tbody>
<tr>
<td><strong>Section 2 (1) (i)</strong> Definitions</td>
<td>In this Act, unless the context otherwise requires—</td>
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<tr>
<td>(i) “begging” means—</td>
<td>(a) soliciting or receiving alms in a public place, whether or not under any presence such as singing, dancing, fortune-telling, performing or offering any article for sale;</td>
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<td></td>
<td>(b) entering on any private premises for the purpose of soliciting or receiving alms;</td>
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<td></td>
<td>(c) exposing of exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease whether of a human being or animal;</td>
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<td>(d) having no visible means of subsistence and, wandering about or remaining in any public place in such condition or manner, as makes it likely that the person doing so exists by soliciting or receiving alms;</td>
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<td>(e) allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms; but does not include soliciting or receiving money or food or gifts for a purpose authorised by any law, or authorised in the manner prescribed in Greater Bombay by the Commissioner of Police, and elsewhere by the District Magistrate, or in any part of the State by the State Government.</td>
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<td>Section 4 (1) (2) (3)</td>
<td>Power to require person found begging to appear before Court</td>
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<tr>
<td>(1)</td>
<td>Any police officer, or other person authorised in this behalf in accordance with rules made by the State Government, may arrest without a warrant any person who is found begging: Provided that, no person entering on any private premises for the purpose of soliciting or receiving alms shall be so arrested or shall be liable to any proceedings under this Act, except upon a complaint by the occupier of the premises.</td>
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<td>(2)</td>
<td>Such police officer or other person shall take or send the person so arrested to a Court.</td>
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<td>(3)</td>
<td>The provisions of Section 61 of the Code of Criminal Procedure, 1898 (V of 1898), shall apply to every arrest under this section, and the officer in charge of the police station or section shall cause the arrested person to be kept in the prescribed manner until he can be brought before a Court.</td>
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<th>Section 5</th>
<th>Summary inquiry in respect of persons found begging and their detention</th>
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<tr>
<td>(1)</td>
<td>Where a person who is brought before the court under the last preceding section is not proved to have previously been detained in a Certified Institution under the provisions of this Act, the Court shall make a summary inquiry, in the prescribed manner, as regards the allegation that he was found begging.</td>
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<td>(5)</td>
<td>If a person is found to be a beggar under the last preceding subsection, the Court shall declare him to be a beggar and may—</td>
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<td>(a)</td>
<td>if the Court is satisfied from the circumstances of the case that the person is not likely to beg again, admonish and release the beggar on his or any other person whom Court considers suitable, executing a bond, with or without surety as the Court may require, requiring the beggar to abstain from begging and to be of good behaviour; or</td>
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<td>(b)</td>
<td>if the Court is of opinion that the person is not likely to give up begging, by order direct such person to report himself forthwith to the Commissioner of Police or the District Magistrate having jurisdiction in the area and shall forward a copy of such order to the Commissioner of Police or, as the case may be, the District Magistrate; or</td>
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<tr>
<td>(c)</td>
<td>order the beggar to be detained in a Certified Institution for a period of not less than one year, but not more than three years.</td>
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<td>(9)</td>
<td>Notwithstanding anything in this section, when the person found to be a beggar as aforesaid is a child, being a child who is not under the age of five years, the court shall forward him to a Juvenile Court, and</td>
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shall not make any order under sub-section (5). The Juvenile Court shall deal with the child under Section 40 of the Bombay Children Act, 1948 (Bom. LXXI of 1948), as if the child were a person described in clause (a) of that section. For the purpose of ascertaining the age of the person, the court may, if necessary, cause the beggar to be examined by a medical officer.

Section 6
Penalty for begging after detention as beggar

(1) Whoever, having been previously detained in a Certified Institution under this Act is found begging, shall on conviction be punished as hereinafter in this section provided.

(2) When a person is convicted for the first time under sub-section (1) the Court shall order him to be detained in a Certified Institution for a period of not less than two years and not more than three years.

(3) When a person is convicted for the second or subsequent time under sub-section (1), the court shall order him to be detained for a period of ten years in a Certified Institution, and may convert any period of such detention (not exceeding two years) into a sentence of imprisonment extending to a like period.

Section 11
Penalty for employing or causing persons to beg or using them for purposes of begging

Whoever employs or causes, any person to solicit or receive alms, or whoever having the custody, charge or care of a child, connives at or encourages the employment or the causing of a child to solicit, or receive alms or whoever uses another person as an exhibit for the purpose of begging, shall on conviction be punished with imprisonment for a term which may extend to three years but which shall not be less than one year."

Analysis of the court judgement
The Ratio Decidendi (reason for the decision) is primarily that within the Basic Structure of the Constitution which guarantees every person the right to live with dignity, the act of criminalising beggary stands as unconstitutional. The Court noted that the law fails the test of Article 14 of the constitution which strikes at “manifest arbitrariness” since the current law does not make any definitive distinction between voluntary and involuntary beggary. Moreover, the court also used Doctrine of Precedents as given by Shayaro Bano V. Union of India (a statute can be invalidated if it violates Article 14), Shantistar Builders v. Narayan Khimlal Totame (highlighting that food, clothing and shelter constitute the essential needs of every individual), Unni Krishnan J.P. V. State of Andhra Pradesh (Right to Education as Fundamental Right), State of Punjab & Ors. V. Mohinder Singh Chawla & Ors. (Right to Health as part of Right to Life), and Bandhua Mukti Morcha vs. Union of India & Ors. (State cannot take any action which curbs individuals’ health, freedom and entitlement to live with human dignity) to argue its case.

Within the legal framework, the Court has showed a unique activist approach in a period when Public Interest Litigations do not hold the same weightage as they used to. Showing a realistic understanding, the Delhi High Court upholds that the State has not done enough to strike at the structural causes of this issue and artificial means to invisibilize beggars would
just remain a superficial solution. Moreover, unlike the executive and criminal justice forces, the Court shows a mature understanding of beggary which is that it is a result of the individual having fallen beyond the help of standard social protection and is the last resort to subsistence, unlike the choice theory that is largely employed to understand this phenomenon.

Interestingly, the court also highlights that it is the marginalised and the poorest of poor that constitute this category and criminalising begging would not only restrict their access to a basic standard of living but also their right to speak of their poor plight. This judgement would also assist in decriminalising the margins as many transgender persons are also booked under these provisions, thereby marginalising an already marginalised community. Within this contextualisation, the court allows the State to criminalise specific types of forced beggary but by formulating a clear factual basis by understanding the socio-economic environment, implications and remaining mindful of the constitutional rights.

Conclusion

This judgement by Delhi High Court highlights changing judicial attitudes as prior to this the constitutional courts have majorly viewed beggars as “public nuisance” or a category which does not fit within the conventional, hygienic understanding of society. In contrast, this judgement not only focuses on the issue through the prism of fundamental rights but also emphasises inclusiveness, tolerance, equality, liberty, and dignity as principles that the State should strive for. By acting as the interpreter of the constitution, this judgement helps in restoring faith on the power of judicial activism as the Court rightly points out, “Law is not a mascot but a defender of the faith. Surely, if law behaves lawlessly, social justice becomes a judicial hoax.”

References

LEGISLATIVE BRIEFS
SCHEDULED CASTE AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT BILL, 2018

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Objective: To nullify the Supreme Court judgment diluting the provisions related to preliminary enquiry for arrest and anticipatory bail under the Act.

Background: Supreme Court’s recent judgment in the Dr. Subhash Kashinath Mahajan vs The State of Maharashtra on 20 March, 2018 amounted to amending the provisions of the PoA Act. It restricted the power of police under the Code of Criminal Procedure to arrest a suspect. The verdict also read down a specific bar in the Atrocities Act of 1989 against anticipatory bail wherein the accused was not allowed to seek anticipatory bail to thwart immediate arrest.

The apex court had directed the concerned Dy. SP to conduct a preliminary inquiry within seven days to find out whether the allegations make out a case under the PoA Act and that arrest in appropriate cases may be made only after approval by the SSP. The verdict sought to balance Dalit rights and rights of an innocent against arrest in a false case. The concern of the court was with Article 21; providing protection from arbitrary arrest.

Reasons for the judgment:
- The law is seen as terrorizing towards innocent individuals and fundamental rights need to be protected. The Article 21 applies equally to all citizens.
- The purpose of change was to provide enough safeguards against violation of fundamental rights without diluting the Act.
- It would reduce undue harassment of the accused and waste of time of police and courts.
- It sought to end the filing of false cases.

Implications:
- National Crimes Record Bureau data shows that share of false cases under the PoA Act have actually declined (2009-2015). The share of false cases filed in 2016 was a tenth of the total cases. While 90% of the 1.45L related cases were awaiting trial by 2016-end.
- The conviction rate is already at a low of 15%. With the upper caste dominated law and order machinery, the discretionary power in hands of officials would further decrease the convictions. Centre for Social Justice, Ahmedabad has studied how there are acquittals in cases of atrocities concerning Dalits due to apathetic attitude of law enforcement.
- Delay in registration of FIRs would impede the strict implementation of the PoA Act.
- It may also be difficult to get the preliminary inquiry conducted within seven days as sufficient number of Dy. SP level officers are usually not available. Typically, the Dy. SP is located at the district and not at taluk/block level.
- Delay in payment of admissible relief amount to the victims of atrocities; it is payable only on the registration of an FIR.
- The modifications defeat the very purpose of the act as it not only serves the purpose of deterrence but also provides a sense of security against social injustice.
The verdict caused a lot of uproar and disharmony in the country. The government saw it as a case of judicial overreach encroaching on legislative territory. Hence it brought an amendment to make the following changes:

Section 18A has been inserted to nullify conduct of a preliminary enquiry before registration of an FIR, or to seek approval of any authority prior to arrest of an accused, and to restore the provisions of Section 18 of the Act.

Section 18A, inserted in the Act, states that:

(1) For the purpose of the PoA Act, -
   (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or
   (b) the investigating officer shall not require approval for arrest, if necessary, of any person, against whom an accusation of having committed an offence under the PoA Act has been made and no procedure other than provided under the PoA Act or the Code of Criminal Procedure, 1973, shall apply.

(2) The provision of Section 438 of the Code shall not apply to a case under the Act, notwithstanding any judgment or order or direction of any Court.

Point of Concern/Recommendations:

- The hastily brought about legislation still does not solve the issue of protecting the fundamental right guaranteed by article 21, leaving scope for the Courts to intervene. The concern raised by the Supreme Court still remains unresolved and the Act can still be misused.
- There have been demands of putting the legislation in the ninth schedule to protect it from the purview of court intervention.
- The scope of bail in non-serious offences should have been thought over.
- Safeguard mechanisms of punishment and fine in case of filing false cases would act as a deterrent and should have been continued with.

Conclusion:

According to data available, the ineffective implementation of the act remains at the core of the problem. The problem is a social one and can be only be resolved at the societal level. The objective of the government should be to sensitize its public machinery to the evils prevailing in the society. Duty as defined by the rule books should come first for the public servant rather than his/her biases arising out of caste affiliations.

The need of the hour for all stakeholders is to understand the reason and logic behind the ruling of the SC. The scope for further alterations in the Act can be pursued by consultation with civil society and taking all parties under confidence. The need to balance the act, the core concern of the SC, still lingers on.

References:

PIB Delhi, Ministry of Social Justice and Empowerment
The Fugitive Economic Offenders Act, 2018

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The Fugitive Economic Offenders Act 2018 was passed in the monsoon session of parliament. This bill has been brought in place to ensure that people charged with economic offences and evading the due process of law, face trial in the country. This bill has been brought in place in light of the growing number of economic offenders fleeing the country. The need for a fugitive economic offender bill was felt as laws like Prevention of Money Laundering Act (PMLA) 2002 which prohibits money laundering, Benami Properties Act 1988 which prohibits benami transactions, Companies Act 2013 which prohibits frauds and unlawful acceptance of deposits, and Code of Criminal Procedure (CrPC) 1973 which prohibits forgery and cheating, do not provide adequate power to the officials in dealing with fugitive economic offenders. It was also observed that the current civil and criminal legal framework doesn’t provide specific regulations in dealing with fugitive economic offenders. The Ministry also states that the procedure under the existing laws is time-consuming, cumbersome and adversely impacts the health of the banks.

The entire matter in this regard is to be looked into by the Special Court, as described in Section 43 (I) of Prevention of Money Laundering Act, 2002. The Authorities under the PMLA 2002 exercise powers given to them under this act. The words not defined will mean as defined in Prevention of Money Laundering Act 2002.

Who is a Fugitive Economic Offender?
There are 55 offences as mentioned in the Schedule Offence, appended to the Act, including counterfeiting of currency, forgery, money laundering, etc. amounting to Rs. 100 crores. The Enforcement Directorate has the responsibility to implement this law.

According to Section 4, Fugitive Economic Offender (FEO) is any person against whom an arrest warrant is issued in relation to Schedule Offence by any Court in India:

a) One who has left India to avoid criminal prosecution
b) One who refuses to return to India to face prosecution

An application has to be filed in Special Court to declare a person as an FEO, along with a list containing details of reasons for believing one to be an accused FEO, properties to be confiscated and information about the whereabouts of the person concerned, if any. The person must appear at a specified place within six weeks from the issue of notice. Proceedings are terminated if the person appears, otherwise he will be declared an FEO.

Power to Confiscate
The Act allows for provisional attachment of properties while the application for declaring the accused as an FEO is still pending before the Special Court.

After a special court declares a person an FEO, it may order that any of the following properties stand confiscated:

a) proceeds of crime in India and abroad whether or not that belongs to the FEO
b) any other property or benami property in India or abroad owned by FEO.

On declaring the accused an FEO, it gives the power to confiscate the property of the offender, this property includes not just proceeds from crime but also other assets of the offender, both in India and abroad. In case the property ordered is in a contracting state, the special court may issue a letter of request to the court of the contracting country for the execution of such order.

Authorities can attach the properties of the accused with the permission of the Special Court for 180 days. They can also attach the properties before
application, then the application must be filed within 30 days. On confiscation, all rights and powers on the property are vested with the government free from any encumbrances (rights and liabilities). The government can dispose of a property within 90 days. The Director or Deputy Director therein can carry out a survey or seizure in the presence of a witness, if they have evidence that the person is an economic offender. The asset of an FEO is not seized if other person has an interest in it, and is proved that such interest was acquired without the knowledge of it being a proceed from the crime.

Appeal:
An appeal against the Special court order can be made to the high court within 30 days. Appeals after 30 days can be entertained by the high court, if it is satisfied with the reasons given. No appeal should be entertained after a period of 90 days.

Prohibiting Legal Recourse
People declared fugitives will not be allowed to file or defend civil cases in courts. Courts can bar a company from filing or defending a civil case by a manager, promoter or director of the company if a majority shareholder has been declared as an FEO.

Criticism and Challenges
a. Excessive powers vested with the Director for survey and seizure
b. The amount of Rs. 100 Cr is arbitrary, and open to criticism that this will allow offenders charged with a lower amount to go scot-free.
c. India’s extradition record remains poor; therefore, extradition and seizure of property abroad remains challenging.
d. The blanket prohibition on filing of civil case by an offender or a manager, promoter or director, if majority shareholder is an FEO is open to being challenged in any court of law abroad and violates Article 21 of the Constitution, i.e. Right to life which includes Right to justice.
e. The Act is ex post facto i.e. it cannot be implemented retrospectively. Thus, the big offenders so far do not come under its purview.

f. The Act allows for the confiscated property to be vested with the government free from any encumbrances (rights and liabilities). It also provides for considering the interests of secured creditors. However, it doesn’t say whether the interests of the unsecured creditors (unpaid wages) will be provided for from the sale of the confiscated property.

Recommendations:
1. Dilute S.14 of Chapter II of The Fugitive Economic Offenders Act, 2018 which bars those declared as FEO from defending any civil claim in any court against them. This takes away the right to justice as embedded in the right to life, and is not in consonance with international laws.
2. Greater emphasis should be put on preventing an economic offender from becoming a fugitive, rather than emphasizing on the extradition.

Conclusion:
There was a need for a bill to exclusively target the fugitive economic offenders of the country. The new act is therefore a step in the right direction towards strengthening laws against the evaders. But for the law to be effective, it has to be enforced stringently. Also, necessary changes must be made to withstand the scrutiny in other courts of law.

References:


The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

Nishtha Relan
Graduate Student, SPPG
TISS – Hyderabad

Ministry – Women and Child Development

Timeline
18th July 2018 – Introduced in Lok Sabha
26th July 2018 – Passed by Lok Sabha

Status – Pending

Objective
To prevent trafficking of persons, especially of women and children, and to provide care, protection and rehabilitation to the victims of trafficking, to prosecute offenders and to create a legal, economic and social environment for the victims and for matters connected therewith or incidental thereto.

Context
India has long dealt with the problem of trafficking of persons. According to the data released by the National Crime Record Bureau in 2016, recorded cases of trafficking in India rose by more than 20% as against the numbers in 2015, with 8132 cases reported. The Trafficking in Persons 2017 Report carried out by the US Department of State, categorizes India as a Tier II country for not fully meeting the minimum standards for the elimination of trafficking, and identifies India as ‘a source, destination and transit country for men, women, and children subjected to forced labor and sex trafficking.’ Until now, The Immoral Traffic Prevention Act, 1956 was the only provision - other than provisions for punishment of crimes against children, and those related to slavery, forced prostitution etc in the Indian Penal Code - which looked at correction of trafficking of women, albeit through a moral lens. The 1956 Act intended to combat trafficking and sexual exploitation for commercial purposes, against the offenders forcing women and children into forceful flesh trade.

Highlights
The Bill specifies the penalties for various offences including for trafficking of persons, promoting trafficking, disclosing the identity of the victim, and aggravated trafficking (such as trafficking for bonded labour and begging). The Act makes aggravated trafficking punishable with rigorous imprisonment of 10 years up to life imprisonment, along with a minimum fine of one lakh rupees.

The Bill provides for the establishment of a National Anti-Trafficking Bureau – comprising police or other officers - to investigate trafficking cases and implement the provisions of the bill. It provides for the Bureau to take over the investigations of any relevant offense referred to it by two or more states. The Bureau may also request for cooperation from the state government or transfer a case to the state government with an approval from the central government.

The Bill lays down the key functions of the bureau as i) coordinating and monitoring surveillance along known routes, ii) facilitating surveillance, enforcement and preventive steps at source, transit and destination points, iii) co-coordinating between law enforcement agencies, non-governmental organizations and other stakeholders, and iv) promoting international cooperation for information sharing and legal assistance.

It aims to appoint nodal officers at state as well as district levels for the purpose of follow-up actions and providing relief and rehabilitation. The Bill also aims to set up Anti Trafficking Units at district levels to deal with the prevention, rescue, and protection of victims and witnesses, and for the investigation and prosecution of trafficking offences.

It provides for the establishment of Anti-Trafficking Relief and Rehabilitation Committees (ATCs) at the...
national, state, and district levels for providing compensation and repatriation to victims and to reintegrate them into society.

The Bill allows the anti-trafficking police officer or unit to rescue a victim in imminent danger, and to send them to rehabilitation.

The Bill provides for setting up of Protection Homes, which would provide shelter, food, counselling, and medical services to victims, and Rehabilitation homes, to provide long-term rehabilitation to the victims.

The Bill provides for setting up of designated courts in each district, seeking to complete trial within a year.

Policy Analysis and Implications

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 creates a loop of bureaucratic units and vague provisions that compound several laws already in place to address crimes regarding trafficking. Section 370 of IPC deals with human trafficking in an all-embracing capacity, and defines trafficking as “any act of physical exploitation, sexual exploitation, slavery or practices similar to slavery and servitude.” It lays down a minimum punishment of 7 years imprisonment, which may extend to 10 years and fine, for trafficking for any purpose - whether begging, domestic work, farm or factory work. The new Bill merely creates a new category of ‘aggravated forms of trafficking’ - trafficking for the purposes of forced labour, begging, marriage and child-bearing - which carry a minimum sentence of 10 years, which may extend to life imprisonment, and yet does not include forced sex-work into this category. These gaps seem to create more confusion that bring clarity to the already existing framework.

The Bill also provides for establishment of various kinds of anti-trafficking committees and control units at national, state, and district levels. While it may seem like a well-branched framework, it only works to create more chaos in a system already burdened with bureaucratic lethargy and transferability of accountability.

Some provisions in the Bill seem overbroad. It authorizes closure of premises, which are “to be used” as a “place of trafficking” which could include land, location and conveyance, which would have to be shut down at a complaint. The provision for confiscation of property also includes properties “likely to be used”, which is just as vague.

The Bill has come under scrutiny and criticism by lawyers, activists, and sex work organizations alike. The Bill relies on the paternalistic raid-rescue-rehabilitate understanding of dealing with the offenders and victims of trafficking, which has long been the outlook of the state regarding trafficking. Even as it takes a step forward in pushing for rehabilitation, it calls for detention of rescues victims in protection or rehabilitation homes against the consent of the individuals, which is a human rights violation, even as noted by UN officials, Special Rapporteur on Trafficking in Persons Maria Grazia Giammarinaro, and Special Rapporteur on Contemporary Forms of Slavery Urmila Boola. The practical aspect of detention of victims until rehabilitation is quite convoluted, and it would be foolish to assume that the survivors of trafficking would be able to heal in detention. To add to this, the bill doesn’t differentiate between treatment of adult and child survivors, further colluding an umbrella solution onto the survivors.

Moreover, the Bill doesn’t differentiate between voluntary sex work and forced sex work in terms of criminalization of ‘soliciting’ sex work, assuming guilt by association for many sex workers. The Bill criminalizes usage of hormones for sexual maturity, which, if not differentiated from the hormone therapy in times of the implementation of the bill, could incriminate trans persons taking conversion therapy. None of these stakeholders have been consulted in formulating this Bill.

The biggest gap that this Bill is unable to address is a broader understanding of the socio-economic patterns, migration issues, and violent backgrounds that create conditions for trafficking, as well as easy targets for the traffickers. The Bill uses an extensively punitive approach to address the problem of trafficking, relegating to criminal law the issues that are essentially that of development, conforming to provisions that already exist, and, in several cases, have failed to curb the rise in the severity of the problem.

Recommendations

First off, the Bill could be sent to the Standing Committee for a thorough revision of the provisions,
with representatives of the affected groups being consulted and on the panel. A research of ground-level nexus of socio-economic, migration and vulnerability factors could be undertaken – along with the study of existing reports – to include more feasible, viable and far-reaching provisions in the Bill.

Community-based rehabilitation should be considered and incorporated within the Rehabilitation mechanism under the Bill, to move beyond detained rehabilitation of survivors.

References:


Kerala floods and the policy response

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As massive floods wreaked havoc in Kerala this monsoon, the lawmakers were roused into action, and also into reviewing gaps in the policies of the state that boasts of its development model. The region started receiving heavy rain on 8th August, and by the time it let up on 19th August, the region faced its worst flood in nearly a century. Nearly 400 casualties were reported and approximately 8,00,000 people got displaced.

Emergency phase action plan

In the emergency phase of the calamity, the Army, Navy and the state administration launched rescue operations and moved stranded people to the relief camps. Kerala's chief minister, Pinarayi Vijayan, said the total number of people taking refuge at the 5,645 relief camps had risen to 725,000. With the rising water levels, as many as 35 dams had to be opened, which further deluged the region. The whole country came together to help by way of crowd-funding. Besides the Chief Minister’s donation website that invited contribution for the relief fund, NGOs, international foundations and individuals also came together to ship relief packages to the flood-hit regions.

Despite the Centre’s release of Rs 600 crore relief fund, the state administration claimed a shortage of funds. India’s existing policy towards accepting funds from a foreign government came into light when reports of UAE’s alleged offer of Rs 700 crore started doing rounds. The 2016 National Disaster Management Plan states, “As a matter of policy, the Government of India does not issue any appeal for foreign assistance in the wake of a disaster. However, if the national government of another country voluntarily helps as a goodwill gesture in solidarity with the disaster victims, the Central Government may accept the offer.” The leading dispensation followed in the footsteps of former United Progressive Alliance (UPA) government that had rejected foreign funds during the 2004 tsunami. (Tripathi, 2018)

In the aftermath

In hindsight, the flood was termed a partly “man-made disaster” by policy analysts, who said the disaster could have been averted, had the administration not ignored the ecological concerns (Sinha, 2018). The 2011 Western Ghats Ecology Expert Panel (also known as the Gadgil Commission after its chairman and ecologist Madhav Gadgil) had in its report charted out areas of the state as extremely ecologically-sensitive where no developmental activities should take place. The report came back to focus post the calamity. Gadgil remarked that the unchecked quarrying and construction in these areas caused the floods. Corroborating this claim, data from the state’s disaster management control room published by Livemint, also showed that flood casualties and injuries were widespread but had more concentration in the few ecologically sensitive areas. (Padmanabhan, 2018)

Construction of dams was also part of the development projects that the Gadgil Committee report warned against. However, the suggestions were shot down; trading development off for
environment was not acceptable when dams were essential for Indian farmers’ sustenance and renewable energy generation.

The opening of 35 dams during the calamity also came under fire and highlighted another policy failure. Madhavan Nair Rajeevan, Secretary, Ministry of Earth Sciences stated that India does not have a policy to manage water in reservoirs. Rajeevan called for adequate flood management systems for dams and water reservoirs that use scientific methods to understand when the time is right to open the gates.

With the accelerated rate of climate change, experts warn that natural disasters may occur at a higher frequency. The policy-makers now need to deliberate on ways of mitigating the frequency of such calamities or the loss caused from it. The trade-off between development and environment protection is a policy dilemma that weighs even heavier now on the lawmakers when millions of lives are on the line.

References:


PUBLICATIONS

Dr. Gayatri Nair, Assistant Professor, School of Public Policy and Governance

The paper explores how caste has come to be understood as practice and in theory. In doing so it responds to the conceptualisation of caste as always linked with modernity, a position that has informed early sociological understanding, political discourse and later theoretical positions such as Post Colonialism in their understanding of the caste question.

This link has historically been conceptualised either through caste positioned as the other of modernity pushing a narrative that saw caste as disappearing with the advent of modernity; or as in the case of Post Colonialism, a position where the contestation to caste must come not from modernity and its values, but rather a distinctly non-modern position.

The paper thus critically examines the historical trajectory of the caste-modernity link and in doing so mounts a defense for the values of modernity through which it is argued a strong critique against caste can be made. This modernist methodology which informs the theorising of the social is one which is able to engage with the experiences of caste while also making a strident call for emancipation of those oppressed by it.
STUDENT PUBLICATION

Salman, Second Year Graduate Student at the School of Public Policy and Governance contributed to the report titled "India’s Smart Cities Mission: Smart for Whom? Cities for Whom? [Update 2018]" during his internship at Housing and Land Rights Network this summer. The report can be accessed at the following link: [click here](#)

Souma Sekhar Gangopadhyay
Graduate Student, SPPG
TISS - Hyderabad

The white paper on intergeneration cohabitation was a result of a project that was commissioned by Airbnb in association with Le Pari Solidaire and the Policy Lab, School of Public Affairs, Sciences Po. The project was undertaken to address two fundamental concerns. First, the probable depletion of affordable housing options in Paris for students and young professionals with the advent of various home-sharing corporations that are functioning in Paris, especially under the shared-economy model. The second was to understand the possibility of developing an intergenerational housing model in France that could not only open new homes for young professionals and students but also address an increasing problem of solitude that is affecting the senior population in the city of Paris, and also in the country at large.

The study spanned from a period of 1 February, 2018 to 1 June, 2018. During this period, the work was done primarily in three locations – the office of Airbnb in Paris (4 Place de l’Opéra, Paris: 75002), the office of Le Pari Solidaire (6 rue Duchefdelaville, 75013 Paris), and at the Policy Lab of the School of Public Affairs, Sciences Po, Paris (27 rue Saint Guillame, Paris: 75007).

The white paper was published by the Chaire Numérique, Gouvernance et Innovations Institutionnelles, Sciences Po, Paris.

Link to the website: [click here](#)
Link to the white-paper: [click here](#)
STUDENT ACHIEVEMENT
Summer School Experience:

The International Summer School on ‘Data Science’ organised by the University of Gottingen, Germany was held between 1st to 17th August, 2018. The coursework focused on key aspects of data processing, management, and publication. The course was designed to cater to students and mid-career professionals from a diverse range of fields. First and foremost, the course introduced me to the guiding principles for scientific data management i.e. ‘FAIR principles’ to emphasise on the importance of quantitative studies being ‘Findable, Accessible, Interpretable and Reusable’. Various sessions were conducted to demonstrate professionals’ standards, privacy considerations, and ethical practices that are integral to the discipline. An interesting learning for me was to understand the importance of data repositories and archives where quantitative datasets (from one’s paper/thesis) can be published, in adherence with FAIR principles. Several demonstrations were held to familiarise us with the process of data publication. We were guided to work with a wide range of data management tools such as R, Python, ArcGIS, RapidMiner Studio, Orange, etc.

In essence, the Summer School was an apt platform to gain insights into the evolving and dynamic aspects of Data Science. It provided me a comprehensive exposure to the international practices in Data Sciences and enabled me to gain valuable insights to complement my interdisciplinary training and research interests.
Two graduate students from the School of Public Policy and Governance, TISS – Sampriti Mukherjee and Souma Sekhar Gangopadhyay, were placed second in the first edition of Consilium 2018 - the Public Policy Competition hosted by the Public Policy Club of IIM Ahmedabad. Teams from IIM Ahmedabad were placed first and third respectively.

The event was organized over two stages:

The first stage was an online submission of a case, where the students had to analyse a policy, stakeholder participation and legal loopholes. They had to come-up with policy recommendations in order to solve the policy problem. Eight teams progressed to the next round where they were supposed to make a policy presentation at IIM Ahmedabad.

The theme for the final round was Education Policy, and a choice was given to the eight teams to analyse and present either on the implementation of Right to Education in private schools, or the policy of setting up Institutions of Eminence (IoE) by the Government of India. Of the two, the team presented on the latter. The team critiqued the existing IoE and presented an alternative framework.

The badminton doubles team with Therese Anna Abraham, second year graduate student at the School of Public Policy and Governance, secured Runner-up position at the Inter College Sports Meet 'OLYMPUS' organised by MANAGE, Hyderabad in the month of August.
ALUMNI

ACHIEVEMENT
Boicha Huidrom, Alumnus of the School of Public Policy and Governance - TISS, Hyderabad is one of the 25 candidates who have been selected for a grant from Zubaan-Sasakawa Peace Foundation meant for young researchers from the Northeast. This grant will allow him to 'look into particular aspects of the history, politics, culture of the north-eastern states in relation to women and gender' and his work will be published by Zubaan.  https://zubaanbooks.com/zubaan-spf-grant-selections/
Perspectives is a weekly open lecture series in the School of Public Policy and Governance. This student led initiative invites eminent academicians and development practitioners to share their critical insights on topical themes of social and policy relevance.

Perspectives July 2018 – August 2018 Series

Rhetoric in the death penalty judgments of the Indian Supreme court
Mr. Rajgopal

PhD candidate at the English department, NYU. Former assistant editor at The Hindu and a visiting faculty at TISS, Hyderabad

Addressing extreme poverty
Mr. Jayesh Ranjan, IAS

Principal Secretary of the Industries & Commerce (I&C) and Information Technology (IT)
**Book Discussion**

*India Moving: A History of Migration*

**Mr. Chinmay Tumbe**

Asst. Professor, Indian Institute of Management, Ahmedabad

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**Unravelling the Gig Economy: Examination of Political Issues**

**Mr. Biju Mathew**

Associate Professor of Information and Systems and American Studies, Rider University, New Jersey

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**Political Economy of Health Care**

**Mr. T. Sundararaman**

Professor, School of Health Systems Studies, TISS. Former Professor of Dept. of Internal Medicine, JIPMER, Puducherry

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**Giving Back: Reciprocity, Obligation and Transnationalisation of Caste in Coastal Andhra**

**Dr. Sanam Roohi**

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