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India Foundation Journal

Editorial Board

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Editor
Maj Gen (Dr) Dhruv C Katoch

Assistant Editor
Siddharth Singh

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Phone: 011- 41654836 / 43012351
journal@indiafoundation.in
www.indiafoundation.in

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India Foundation is an independent research centre focussed on the issues, challenges, and opportunities of the Indian polity. The Foundation believes in understanding contemporary India and its global context through the civilizational lens of a society on the forward move. Based on the principles of independence, objectivity and academic rigour, the Foundation aims at increasing awareness and advocating its views on issues of both national and international importance.

With a team of dedicated professionals based at its office in New Delhi, the Foundation works with partners and associates both in India and overseas to further its stated objectives.

About India Foundation Journal

The India Foundation Journal is led by an Editorial Board of eminent scholars and leaders from various spheres of Indian public life. The bi-monthly journal covers a wide range of issues pertinent to the national interest, mainly focusing on international relations, national security, legal and constitutional issues and other issues of social, religious and political significance. The journal seeks articles from scholars with the intent of creating a significant body of knowledge with a nationalist perspective and establish a recognised forum for debates involving academicians and policymakers.

Bharat: Awakening and Churn

Dhruv C Katoch*

On the night of 14-15 August 1947, Mr Nehru, India's first Prime Minister, delivered his now famous and oft-quoted tryst with destiny speech to the Constituent Assembly in an address telecast over the radio. The speech, a carefully crafted masterpiece, was a defining moment in India's history, holding great promise for the future. "A moment comes", he said, "which comes but rarely in history, when we step out from the old to the new — when an age ends, and when the soul of a nation, long suppressed, finds utterance".

It was an interesting play of words: "a soul long suppressed." The meaning of the phrase was never amplified. In the decades following this powerful oratory, there was no mention of what the elected government proposed to do to unshackle the hearts and minds of the people and enable their souls to find utterance. There was little clarity also on what exactly was suppressed that Mr Nehru referred to. Was it just political suppression and economic subjugation that India needed to be freed from? Or was it something much deeper?

Referred to in our ancient texts as Bharat, the subjugation of this land was far more than political and economic subjugation. It was a brutal assault on our culture, beliefs, spirit, and our very way of life. It was a subjugation of our scriptures, our sacred spaces and our core identity. So what did India's rulers do about setting right this very grievous wrong? A reasoned assessment of the actions of various governments in the first few decades after independence shows that far from doing anything to address historical wrongs, they set about further exacerbating old wounds.

Using the legislative route, the Central Government passed The Places of Worship (Special Provisions) Act, 1991—a legislation that sought to maintain the status quo of the religious character of any place of worship as it existed on 15 August 1947. The Act was merely to stay action on claims by the Hindu community to restore sacred sites of many Hindu temples, such as the Krishna Janmabhoomi Mandir at Mathura,—a place revered by Hindus who believe that this was the birthplace of Sri Krishna. The Mandir was demolished by Aurangzeb in 1670 CE, and a mosque was constructed atop its ruins—a fact supported by the official court bulletin of February 1670. This is just one example. Many others abound, the more prominent being the Gyanvapi mosque in Varanasi, constructed over a destroyed Hindu Mandir, as evidenced by the Archaeological Survey of India (ASI) findings.

The reclamation of all Hindu sacred spaces should have taken place soon after independence, for that would have given utterance to the soul of India, long suppressed. But that did not happen. A false sense of what it means to be secular kept all such issues at abeyance. The grievous hurt extended to other matters, too. The state control

*Maj. Gen. Dhruv C. Katoch is Editor, India Foundation Journal and Director, India Foundation.

of important Hindu mandirs and pilgrimage places was legislated, but no similar legislation for mosques, churches or Gurudwaras was ordained. To exacerbate matters, the Waqf Boards set up in 1913 to manage waqf properties were, post-independence, given extraordinary powers to the extent that they became unanswerable to any authority. This led to piquant situations where these boards started usurping private and government land. Why such powers were given had much to do with vote-bank politics, wherein certain political parties sought to consolidate the Muslim vote in their favour. In the process, it created schisms in the very fabric of India and resulted in the rise of communal politics in the country.

In the field of education, rather than creating a conducive education environment which drew inspiration from India's past, to preserve the soul of India, we outsourced education to the left-leaning cabal. As stated by Sanjeev Sanyal, "The Left dominance over the intellectual establishment has its roots in the systematic 'ethnic cleansing' of all non-Left thinkers since the 1950s". As a result, "there were no non-Left academics remaining in the social sciences field in India by the early 1990s".[1]

These self-declared intellectuals trampled over Bharat's traditional and progressive cultural practices, jettisoning our rich cultural values. Speaking at a book discussion on the unveiling of the book The Indian Conservative by Jaithirth Rao, Dr Abhay Firodia, President Force Motors, made the point that the history taught today is "malicious, synthetic and fabricated, which is trying to break our affinity to our land, destroy our confidence and make us hate ourselves".[2] Many intellectuals have expressed similar sentiments over the years, but only now do we see some signs of change, as indicated in the new education policy which has been promulgated.

On the economic front, for many years, India's intellectual establishment remained wedded to the idea that Nehru's socialist economic model was the right course for India to emerge as a developed country. All that was required was proper implementation. This, again, was a product of leftist thought and had no rationale or model to back it. India's stagnation, even three decades after pursuing the Nehruvian dream, was not attributed to the failure of socialism but, quite perversely, to the majority community of India. It was an economist of the establishment, Raj Krishna, who derisively coined the term "Hindu rate of growth"[3] to show India's failure to the world as one resulting from its people who professed the Hindu faith. This was insulting. We do not see the term Muslim rate of growth being applied to countries like Pakistan, Bangladesh, Somalia and Afghanistan. Nehru steered India through difficult times, but his economic and social models were not recipes for success. One of the reasons was that they were an artificial import, not suited to the genius and culture of Bharat.

In another 23 years, India will commemorate a century of freedom. However, steps to free the long-suppressed soul of India began in a real sense only in 2014 when the people of India gave a thumping mandate to the BJP-led NDA government and repeated the same in 2019. Over the last decade, we have seen the construction of the Ram Temple in Ayodhya, the abrogation of Articles 370 and 35A, the abolition of instant Triple

Talaq, the introduction of the New Education Policy, and various such initiatives in multiple fields. In the economic sphere, we are now the fifth largest economy in the world and will soon become the third largest; the GDP and the per capita income are on the rise, we have successfully weathered the downturn caused by the Chinese virus, and despite the conflicts prevailing in India's neighbourhood, we are the fastest growing large economy in the world. Today, there is a renewed sense of pride in our civilisational heritage and ethos, and the world looks up to India.

India's culture, cuisine, and ethos are respected worldwide. Yoga, India's gift to the world, has become a household word. This is no small achievement.

However, many challenges still need to be addressed and overcome. Despite a reduced mandate in the 2024 elections, the coming decade promises to be exciting, purposeful, and challenging. But the difference now is that we have finally started shedding the hesitancies of the past and reclaiming our lost heritage. The soul of Bharat has found utterance. Bharat is in churn, but the churn reflects the 'Samudra Manthana' or 'churning of the ocean' as depicted in the Vishnu Purana, Bhagavata Purana, and the Mahabharata. It is truly a time for hope and rejuvenation.

References:

1 *http://www.sanjeevsanyal.com/home/article_detail/86*

2 *https://www.hindustantimes.com/cities/indian-conservatism-has-not-received-academic-recognition-jaitirth-rao/story-NCBSGMyxska32KenM3TeyJ.html*

3 *https://www.livemint.com/economy/the-history-behind-hindu-rate-of-growth-in-charts-11678370005198.html*

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Religious Reservations in India: Past and the Future

Vikramjit Banerjee*

The Context

The Indian state has a highly complex relationship with religion. The relationship is complicated by 1000 years of history of oppression and colonisation of the Indigenous people on the basis of religion and a continuous 1000-year effort of resistance overtly and covertly by the oppressed majority to have a voice in government. A short reading of Indian history would show that it has been a tendency for outsiders who have ruled India to bring in their co-religionists and appoint them to positions of power and influence in the state or the kingdom they formed. This was as true about the Turkish sultans as the Mughals and the British. Unless absolutely necessary, the indigenous locals, who were primarily Hindus, were not appointed to government positions. Undoubtedly, during all these rules of foreigners ruling India, there were some exceptional Indians and Hindus who rose to great prominence. However, they were exceptions and not the norm. Though there has been a tendency post-independence to show as if in all the period for the last 1000 years, Hindus were equally appointed in positions of governance, an objective study would clearly show that it was by far not the case. The ruling dispensation of the period clearly preferred their co-religionists to Hindus when appointing people to power.

This has been a source of grievance and anger amongst Hindus historically. During the end of the British Raj, one of the places of great contestation was the appointment of Indians to the bureaucracy and the judiciary, especially the bureaucracy. The appointments to the bureaucracy are the genesis of today's debate about reservations on religious lines.

It had been the specific grievance of explicitly Muslim politicians during the period after the first war of independence in 1857 that Muslims, who were the rulers of this country and who had a right to rule, were being displaced by Hindus in government appointments by the British. There was much angst that 'martial' Muslims were being replaced by 'effeminate' Hindus, and especially Bengali Hindus, in the governance of the country. The argument was that Hindus who had adapted themselves to the British Raj and had learnt English with the help of Western education were being taken into the bureaucracy in very large numbers by the British. The Muslim intelligentsia and the elites were especially aggrieved by their perceived displacement from their positions of power after the events of 1857.

The Muslim struggle leading up to the partition of this country was primarily based on that very grievance. At the heart of the demand for the formation of the state of Pakistan was that Muslims of India were not adequately represented in the executive and legislature. The British, supported by the Indian National Congress, tried to alleviate these fears by providing various measures,

*Shri Vikramjit Banerjee is a Senior Advocate, Supreme Court of India and Additional Solicitor General of India. The views expressed by the author are entirely personal and have nothing to do with the Government.

including separate electorates and reservations in the bureaucracy and public employment and education. Unfortunately, instead of allaying these unjust demands, these actions catalysed the road to the partition of the country and the formation of Pakistan. Reservations based on religion once given were never enough. It is, therefore, important to remember this when addressing the question of religious reservations in India.

The Constitutional Debates on Religious Reservations

When the Constitution was being framed after the country's partition on religious lines, the Constituent Assembly came to discuss the issue. On the question of providing safeguards for minorities, Shrimati Vijay Lakshmi Pandit, during the debates on 20th January 1947, famously said:

"The Resolution before us stresses complete freedom for the individual and concedes guarantees to every legitimate group. Therefore, in this, there is no justification for fear for the minorities. Even though certain minorities have special interests to safeguard, they should not forget that they are parts of the whole, and if the larger interest suffers, there can be no question of real safeguarding of the interest of any minority."

Sardar Patel, in the discussion on the Report on the Advisory Committee on Minorities on 11th May 1949, made specific observations of reservations for religious minorities, harking back to the history of reservations for religious minorities in India: "the advisory committee concluded that the time has come when the vast majority of the minority communities have themselves realised after great reflection the evil effects in the past of such reservation on the minorities themselves, and the reservations should be dropped."

He further concluded the debate by stating firmly: "the Muslim representatives put forward this plea that all these reservations must disappear and that it was in the interests of the minorities themselves that such reservations in the Legislature must go. The report states that it is no longer appropriate that there should be statutory reservation of seats for minorities except the Scheduled Castes and the Tribals."

Naziruddin Ahmed observed that:

"Sir, I believe that reservation of Muslim seats, especially now, would be really harmful to the Muslims themselves. In fact, if we accept reservations and go to the polls, the relationship between Hindus and Muslims, which now exists, will deteriorate. The great improvement in the situation that has been achieved will be lost. The Hindu-Muslim relation of the immediate past will be recalled, and feelings will be embittered…8.91.153 Sir, reservation is a kind of protection which always has a crippling effect upon the object protected. So, for all these reasons, I should strongly oppose any reservation for Muslims. Now, Mr. Lari's amendment is to the same effect that there should be no reservations for Muslims, and I welcome it so far as Muslims are concerned."

The danger of reservation for religious minorities was expressly recognised. It was decided explicitly during the framing of the Constitution that even though such reservations preexisted the Constitution, it had no place in the Constitution of India, which came to be framed.

The Supreme Court on Religious Reservations

The Supreme Court has not addressed the question directly and clearly. However, the issue has been brought before it several times, especially in the context of repeated attempts by governments of so-called "secular parties" to bring in reservations in employment for religious minorities disguised as reservations for Other Backward Classes. However, the broad line of the Court can be made out when the Court was confronted by a live religious reservation in the legislature, which was a historical legacy. Broadly, while addressing the question of reservations even though in the context of representation in the legislature in the Sikkim Assembly of the Buddhist Sangha, which had a reservation in the historical context of the state, the Court in a Constitutional bench decision observed **in *R. C. Poudyal v. Union of India*, 1994 Supp (1) SCC 324 at page 388:**

137. *The Sangha, the Buddha and the Dharma are the three fundamental postulates and symbols of Buddhism. In that sense, they are religious institutions. However, the literature on the history of the development of the political institutions of Sikkim, adverted to earlier, tends to show that the Sangha had played an important role in the political and social life of the Sikkimese people. It had made its own contribution to the Sikkimese culture and political development. There is material to sustain the conclusion that the 'Sangha' had for long associated itself closely with the political developments of Sikkim and was interwoven with the social and political life of its people. In view of this historical association, the provisions in the matter of reservation of a seat for the Sangha recognises the social and political role of the institution more than its purely religious identity. In the historical setting of Sikkim and its social and political evolution the provision has to be construed really as not invoking the impermissible idea of a separate electorate either. Indeed, the provision bears comparison to Article 333 providing for representation for the Anglo-Indian community. So far as the provision for the Sangha is concerned, it is to be looked at as enabling a nomination, but the choice of the nominee is left to the 'Sangha' itself.* ***We are conscious that a separate electorate for a religious denomination would be obnoxious to the fundamental principles of our secular Constitution. If a provision is made purely on the basis of religious considerations for the election of a member of that religious group on the basis of a separate electorate, that would, indeed, be wholly unconstitutional.*** *But in the case of Sangha, it is not merely a religious institution. It has been historically a political and social institution in Sikkim and the provisions in regard to the seat reserved admit of being construed as a nomination and the Sangha itself being assigned the task of and enabled to indicate the choice of its nominee. The provision can be sustained on this construction.*"

According to the Supreme Court, any reservation based on religion is anathema to the Constitution.

The New Political Game

The new political game of trying to circumvent this Constitutional bar by incorporating religious minorities into the Other Backward Classes category and thereby pushing reservations in employment and education for them under Articles 15 and 16 of the Constitution in a large number of states by so-called "secular" political parties must therefore be seen in that light. It is clearly an attempt to do something which is expressly unconstitutional in a way so that it does not look as if it is against the constitutional bar against reservations based on religion. It must be called out as it is: a colourable action with unholy motives.

The Endgame

It is surprising (or maybe not surprising at all) that 70 years after the culmination of the disastrous policy of religion-based reservations, resulting eventually in the partition of India with substantial human costs, calls for the same thing are being raised again. The coalition calling for it is the same coalition of interests that did the same in pre-partition India. A coalition of leftists, so-called enlightened liberals and Islamists are again leading the same movement. Like those in pre-partition India, the trend started with the completely made-up report of the Sachar Committee, whose data has never stood up to scrutiny. Just like in pre-partition India, the Westernised elites have primarily been complicit in this scheme to be able to hang on to power when they see it slipping away from their hands in the face of growing calls for democratic representation. This is a fool's game and, more importantly, a very dangerous one considering the history of grievances and documented history of discrimination against Hindus till the partition of India and the sensitivities surrounding the same. As those invested in India, we must actively, openly, and aggressively thwart this badly thought-out design. As we learned during partition, the cost of not resisting it successfully is just too high. Therefore, we must resist this demand with all our might right at the beginning or risk our very existence again, like in the medieval tale of the dwarf and knight.

After all, "Those who don't learn from history are condemned to repeat it."

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Uniform Civil Code - Equality More Than Uniformity

A. Surya Prakash*

A few months from now, Indians will be celebrating the 75 anniversary of the adoption of the Constitution by the Constituent Assembly on November 26, 1949. The day is observed as Constitution Day every year. It is marked by major public events in which the president, prime minister and other prominent public figures participate and recall the strenuous efforts made by members of that august assembly to draw up a document that would foster unity and integrity, deepen democratic traditions and ensure the social and economic advancement of the nation.

Notwithstanding 106 amendments and a serious challenge to its core principles in the 1970s, the Constitution has stood the test of time. However, some nagging issues persist, one of which is the Indian State's inability to introduce a Uniform Civil Code (UCC)—something critical for society's overall advancement along the core principles of equality and non-discrimination, which are central to the Constitution.

The inability to enforce such a code can be attributed to the national leadership's lack of firmness at the time of independence in drawing up a legal framework wherein the core principles of liberty, equality, and fraternity, which constitute the bedrock of the Constitution, would prevail in all circumstances and override laws and customs inimical to the emergence of a secular, democratic, and liberal society.

A UCC primarily deals with issues such as marriage, divorce, inheritance, succession, etc. From time immemorial, the Muslim clergy has resisted conforming to a uniform civil law in these matters. They claim that all this is governed by the Sharia, and no true Muslim can accept any law that is against the Sharia, which is the religious law.

The failure of India's political leadership is all the more glaring in the context of the politics of the 1940s in the sub-continent when the Muslim leadership stepped up the demand for a separate Islamic State for Muslims and secured it with the creation of Pakistan and the bloody partition of the country. However, the India that remained after partition opted for a secular, democratic constitution because that was the will of the Hindus and persons of Indic religions, who constituted 88 per cent of the population. India did not go the Pakistani way because the Hindus abhorred a theocratic state. The political leadership, which was influenced by this sentiment in the majority, ought to have insisted that those who stayed back, especially the Muslims, would have to conform to these liberal values. Those who felt that religious injunctions must prevail at all times could cross over to the newly created Islamic state.

Consequent to this hesitation, a UCC was not drafted. Instead, the Constituent Assembly paid lip service to the idea by incorporating it in Article 44 under Part IV of the Constitution titled 'Directive Principles of State Policy', which was a kind of advisory—thus conveniently passing the buck to future generations. The article directed the State to "endeavour" to secure a Uniform Civil Code for its citizens. Meanwhile, the issue has grown even more complex due to demographic change.

*Shri A. Surya Prakash is a Trustee of India Foundation & Vice-Chairman, Executive Council, Prime Ministers Museum & Library, New Delhi.

How the Constituent Assembly faltered

How the secular, democratic Indian State lost the initiative to enforce laws that gave paramountcy to the Constitution rather than to sectarian laws and customs originates in the proceedings of the Constituent Assembly, which drafted the country's Constitution. This was most evident when Article 44 (then Article 35) on adopting a Uniform Civil Code was debated in the assembly on November 23, 1948.

The protests began with Mohamad Ismail Sahib, who opened the debate. In his speech, Ismail Sahib argued that the right to follow one's own personal law is a fundamental right. He claimed that many European nations had made such concessions to Muslims. He moved an amendment that said the personal laws of any group should not be interfered with.[1]

Mahboob Ali Baig Sahib Bahadur also moved a similar amendment. He said: "As far as Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion."[2]

B. Pocker Sahib Bahadur supported these amendments and described the Article as "a tyrannous provision which ought not to be tolerated" because it interferes with religious practices and murders the people's conscience. Mr. Hussain Imam expressed similar views.

Mr Naziruddin Ahmad moved an amendment and said UCC violates constitutional guarantees. Thus, all Muslim members who spoke on Article 44 were opposed to the introduction of a uniform civil code.[3]

Mr. K.M. Munshi confronted them. He said that Article 25 permits the State to make laws concerning "secular activity" associated with religious practice and for "social welfare and reform". Therefore, Article 44 allows the government to attempt a unification of personal laws. He challenged members who said a Uniform Civil Code would be "tyrannous". Nowhere in Islamic nations is the personal law of each minority recognised as sacrosanct. He cited the example of Egypt and Turkey and said no minority in those countries is allowed to have such personal laws. Even in India, although the Khojas and Cutchi Memons were highly dissatisfied, the Shariat Act was imposed on them. They were forced to submit to it unwillingly. "Where were the rights of minorities then?" he asked, referring to minority sects in Islam who were compelled to accept the Shariat Act. He said 'we want to divorce religion from personal law". What has inheritance, succession, and such other matters got to do with religion? Mr Munshi was categorical and blunt. He said "We have reached a point when we must put our foot down and say that those matters (marriage, divorce, succession etc) are not religion, they are purely matters for secular legislation". He cited the example of Hindus moving away from the injunctions imposed by Manu and Yagnavalkya. Muslims must abandon this "isolationist outlook on life."[4]

Mr Alladi Krishnaswami Ayyar said the Hindu Code had moved away from ancient Hindu law because they had to move with the times. If Muslims are opposed to a common civil code, how is it that they do not insist on a separate Islamic criminal law for Muslims? He said, "The only community willing to adapt to changing times, it seems, is the majority community."[5]

Dr. B.R. Ambedkar, the Chairman of the Constitution Drafting Committee, replied to the debate and rejected the contentions of the Muslim members. He said he was surprised by their arguments because the country already has a uniform code of law covering almost every aspect of human relationships. This includes a uniform

criminal code, a uniform transfer of property act, the negotiable instruments act and practically a uniform civil law. The only province in which civil law has not invaded is marriage and succession. "It is this little corner which we have not been able to invade so far", and this Article intends to bring about this change.

As regards the contention of Muslim members that Shariat law is immutable and uniform throughout India, he reminded the House that Shariat did not apply to Muslims in North-West Frontier Province until 1939. They followed the Hindu law regarding succession, etc. Also, Muslims in the United Provinces, Central Provinces and Bombay followed the Hindu succession law until the Shariat law was enacted in 1937, and the Muslims of Malabar followed the Hindu matriarchal law. Therefore, he said, all the amendments suggested by Muslim members had to be rejected.[6]

India today is paying the price for the pusillanimity of the national leadership in the initial years of independence.

But Nehru Imposes a Common Code for Hindus

The government headed by Jawaharlal Nehru succumbed to pressure from the Muslim minority while drafting the Constitution and placed the UCC idea under the Directive Principles of State Policy, which is of an advisory nature, instead of making it imperative. However, the leaders of the Congress Party were on an overdrive to modernise Hindu laws and pursued this project with utmost commitment. When it came to reforming Hindu Law, there was no such hesitation. The Nehru government passed a clutch of bills going under the umbrella of the Hindu Code Bill to reform and modernise Hindu laws. These included the Hindu Marriage Act, the Hindu Adoptions and Maintenance Act, the Hindu Succession Act, and the Hindu Minority and Guardianship Act. These laws were made applicable to all "Hindus" and this included Buddhists, Sikhs and Jains.

It must also be noted that there are other religious groups in the country which have their own personal laws, like the Christians, the Parsis and the Jews. Still, one has not seen this kind of vociferous resistance to a common civil law among these religious groups. They are more willing to align their family laws with the larger constitutional scheme.

A Significant Directive from the Supreme Court

The Supreme Court has repeatedly dwelt on this issue and emphasised the need for a UCC.

One of the most significant judgements of the Supreme Court on the need for UCC was delivered by Justices Kuldip Singh and R.M.Sahai in Smt. Sarla Mudgal, President, Kalyani & Ors Vs Union of India & Ors in May, 1995. They described Article 44 as "an unequivocal mandate… which seeks to introduce a uniform, personal law - a decisive step towards national consolidation".

The judges noted that Prime Minister Jawahar Lal Nehru, while defending the introduction of the Hindu Code Bill instead of a Uniform Civil Code in the Parliament in 1954, had said, "I do not think that at the present moment the time is ripe in India for me to try to push it (UCC) through" and observed somewhat sarcastically that it appears that even 41 years thereafter, the Rulers of the day "are not in a mood to retrieve Article 44 from the cold storage where it is lying since 1949". The Governments - which have come and gone - have failed to make any effort towards a unified personal law for all Indians.

The judges said the reasons were too obvious to be stated. The utmost that has been done is to codify the Hindu law in the form of the Hindu Marriage Act 1955, The Hindu Succession Act 1956, the Hindu Minority and Guardianship Act 1956 and the Hindu Adoptions and Maintenance Act 1956, which have replaced the traditional Hindu law based on different schools of thought and scriptural laws into one unified code. "When more than 80 per cent of the citizens have already been brought under the codified personal law, there is no justification whatsoever for keeping in abeyance, any more, the introduction of "Uniform Civil Code" for all citizens".

Prime Minister Narendra Modi seemed to echo the sentiment of these two learned judges while addressing the nation on Independence Day recently when he asserted that the nation needed a "secular" civil code and not a communal code. This meant that the current civil code was limited to Hindus and citizens adhering to the Indic religions but not to others. He also referred to several directions of the Supreme Court in this regard.

The court said Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom, whereas Article 44 seeks to divest religion from social relations and personal law. "Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27". The personal laws of the Hindus, such as those relating to marriage, succession and the like, have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians.

Equally significant was the apex court's view that the Hindus, along with Sikhs, Buddhists and Jains, "have forsaken their sentiments in the cause of the national unity and integration," but some other communities would not, though the Constitution enjoins the establishment of a "common civil code" for the whole of India.

They said that successive governments have been wholly remiss in their duty to implement the constitutional mandate under Article 44 of the Constitution of India. We, therefore, request the Government of India, through the prime minister, to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code throughout the territory of India." This was in 1995, when Mr. P.V. Narasimha Rao was the prime minister.[7]

In a separate judgement, Justice R.M. Sahai said that when the Constitution was framed with secularism as its ideal and goal, the consensus and conviction to be one, socially, found its expression in Article 44 of the Constitution.

Justice Sahai hits the nail on the head when he says, "Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression. Therefore, a unified code is imperative both for the protection of the oppressed and promotion of national unity and solidarity".

He then advised the government to rationalise the personal law of the minorities. He even suggested that the government bring in an anti-conversion law to check the abuse of religion by any person.[8]

The Apex Court returned to this issue on a couple of occasions after that and reiterated the need for a UCC.

Uttarakhand Bites the Bullet

It is tragic that almost 40 years after this landmark judgement of the apex court, India's political leadership has not gathered the nerve to implement Article 44.

However, amidst all this intransigence, it must be said that a small state – Goa - had, by tradition, adopted a UCC long before India's independence. The Goa Civil Code, based on the Portuguese Civil Code, came into being in 1870 and still holds good. It applies to all religious denominations. Even after Goa merged with the Indian Union in 1961, the civil code continued, even though an attempt was made to knock it down in the 1980s. The Goa Civil Code does not permit polygamy and ensures joint property ownership by husband and wife.

Barring Goa, Uttarakhand is the first state to fulfil the constitutional mandate of having a UCC. Despite much resistance from the usual suspects, this state decided to bite the bullet early in 2024. It passed a Uniform Civil Code (UCC) in the state legislature, secured the consent of the state assembly, and sent it up for the assent of the President. This is the first state to adopt such a measure after independence. The law aims at uniformity in matters such as marriage, divorce, succession and inheritance and seeks to override customary law or religious injunctions. However, the law does not apply to Scheduled Tribes. The Uttarakhand law bars polygamy and child marriage. Also, dissolution of marriage is possible only under this law.

As usual, Muslim leaders objected to the Uttarakhand law and said they should be exempted. Sadly, the response of the leaders of this community to the UCC proposal now is no different from what was said 76 years ago on this issue by Muslim members in the Constituent Assembly.

Maulana Arshad Madani, head of the Jamiat-Ulema-e-Hind, said, "We do not accept any law against Sharia. Muslims can compromise on everything, but not with Sharia".[9]

Mr Asaduddin Owaisi, chief of the Majlis-e-Ittehadul Muslimeen, also slammed the bill and declared it contrary to the fundamental rights guaranteed under the Constitution.[10]

Qazi Mohammad Ahmad Qasmi of Dehradun City held out a threat. He said, "The government will be responsible for the damage caused to the State".[11]

The Law Commission Wakes up at Last!

The Supreme Court had advised the government in 1995 to consult the Law Commission to draft a UCC. There was some movement on this front when the Law Commission of India put out a consultation paper on 'Reform of Family Law'. Again, last year, when the Narendra Modi government asked the commission to examine the issue, the latter issued a public notice calling for suggestions and opinions from all stakeholders.[12]

It is learnt that the commission has been flooded with responses and, at last count, had received 7.5 million suggestions.[13]

Where do we go from Here?

Unfortunately, because of the dominance of the Congress Party in national politics in the initial decades after independence and the party's pseudo-secular policies and commitment to minority appeasement, some fundamental truths about the politics of the sub-continent leading to partition were brushed aside. This effort of the Congress Party was aided and abetted by left-leaning and Nehruvian academics and media persons. As a result, sustained efforts were made to bury the truth about how the Muslims stepped up their demand for a separate Islamic nation in the 1940s

and secured one with the creation of Pakistan in 1947. Secondly, although the Muslims opted for a theocratic state, the fact that the Hindus and citizens belonging to the Indic religions, who constituted 88 per cent of the population in India after partition, chose to establish a secular, democratic nation with liberal values was never acknowledged by the Congress Party, the communists and their fellow travellers and the leaders of the religious minorities. They did not have the grace to say that India's Constitution, which provided a basket of fundamental rights to religious, linguistic and ethnic minorities, flowed from this incredible sense of humanity and respect for pluralism among the Hindus. Nor did they ever understand or acknowledge that the Indian Constitution provided all this to the minorities because Bharat was civilisationally secular and democratic.

What has this respect for pluralism among the majority done in terms of demography? As many as 35 million Muslims preferred to stay back in India at the time of independence. Today, the Muslim population in India is estimated to be 210 million. Similarly, the Christian population in the country has risen over the last 77 years from 8 million to 35 million. The consequence of all this is the emergence of a kind of separateness, especially among Muslims.

Yet, the leaders of the Muslims who stayed back in India began once again pursuing what Mr K.M. Munshi described in the Constituent Assembly as an "isolationist" policy yet again, objecting to a UCC and such other measures which promote the core principles in the Constitution like equality before law and non-discrimination.

Dr. Ambedkar brilliantly analysed the problem eight decades ago when he said, "The dominating consideration with the Muslims is not democracy. The dominating consideration is how will democracy affect the Muslims in their struggle against the Hindus".[14]

Dr. Ambedkar elaborates on his fears in this regard. He died in 1956 and, therefore, did not have the benefit of listening to or reading about the fiery speeches of the Shahi Imam and other Muslim leaders who encouraged separateness. Yet, he had said:

"The allegiance of a Muslim does not rest on his domicile in the country which is his, but on the faith to which he belongs. To the Muslim, 'Ibi Bene Ibi Patria' is unthinkable. Wherever the rule of Islam is, there is his own country. In other words, Islam can never allow a true Muslim to adopt India as his motherland and regard a Hindu as his kith and kin".[15]

In these circumstances, how does democratic India achieve the social and political goals outlined in the Constitution?

Sadly, politicians of certain Muslim parties like the All India Majlis-e-Ittehadul Muslimeen (AIMIM) are once again kindling separateness among Muslim citizens, leading to fresh tensions.

As a result, the problem has now been aggravated. Although Muslims have lived in a liberal, secular, democratic society for 76 years, the urge to demand special privileges persists. Some members of this community believe that they can have a veto on every matter. We hear the same absurd, myopic arguments from Muslim leaders now vis-à-vis a uniform civil law.

If India is to remain a liberal, democratic society, the Muslim arguments against a UCC must be challenged and brushed aside. There need be no confusion about it.

In other words, we need to disprove Ambedkar if we are to save the Constitution that he has given us. As this writer said in another context, we must ensure that religion dissolves into the great crucible

called the Constitution of India. It must yield to the Constitution rather than the other way around. Should there ever be a conflict between a religious text and the Constitution, the latter must prevail. In other words, the Constitution is supreme. We cannot allow any other text to have a perch above it. This is the prescription for establishing a secular society. This is Prime Minister Narendra Modi's message on Independence Day. The enforcement of a Uniform Civil Code is a must to establish the supremacy of the Constitution of India.

References:

1 *Constituent Assembly Debates (CAD), Volume VII, Lok Sabha Secretariat, New Delhi,1989, p.541*

2 *Ibid .543*

3 *Ibid 542*

4 *Ibid 548*

5 *Ibid 549*

6 *Ibid 551*

7 *https://main.sci.gov.in/jonew/judis/10742.pdf*

8 *Ibid 14*

9 *https://www.indiatoday.in/india/story/uttarakhand-uniform-civil-code-maulana-asad-madani-jamiat-ulama-i-hind-dont-law-against-sharia-2498522-2024-02-07*

10 *https://www.indiatoday.in/india/story/asaduddin-owaisi-questions-government-on-uttarakhand-ucc-uniform-civil-code-muslim-rights-2509580-2024-03-02*

11 *https://sanatanprabhat.org/english/93445.html*

12 *https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/06/2023061446.pdf*

13 *https://www.indiatoday.in/law/story/uniform-civil-code-law-commission-received-over-75-lakh-public-feedback-2413073-2023-07-28*

14 *(*Thoughts on Pakistan*, Thacker and Company Ltd, Rampart Row, Bombay, 1941, p.223)*

15 *Ibid 233*

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Reviving Sacred Spaces of Bharata: Reclaiming Heritage after Centuries of Subjugation

Neera Misra*

Significance of Sacred Geospatial Areas

As famously said, "*Sometimes it is impossible to know where you are headed without reflecting on where you came from*". Revisiting revered locations takes us to a land which today is the world's oldest and only living civilisation. It is impregnated with deep-rooted, widely spread auspicious spaces of the original Bharata, a 'viksit' and the most sought-after destination. A vital step to regain that glorious status would be to revisit the sacred geo-landscape that gave traditional 'Gyan-Vigyan' and nurtured this 'Vishva Guru,' Bharatvarsha.

The mention of 'sacred spaces' takes us to 'Bharata', the terminology specifying a land of knowledge, the name instinctively evoking reverence. The G20 Summit of 2023 left a significant imprint as the invites from the President invoked our land's original name 'Bharata'; it gently reconnected us to our sacred identity, invoking a sense of pride, contrasting with 'India' that conjures up colonial baggage. What a blessing to reinforce its distinctiveness, signifying also the uniqueness of its meaning. 'Bha-Ratha' implies the land of 'Bharatavansha' kings and their kingdoms; it also denotes significant aspects that define our deep-rooted civilisation. 'Bharata' is a 'ratha' of 'light', a *vehicle or carrier of knowledge*. Knowledge is sacred, and so is the land that gave us our Gyan-Vigyan, Itihasa, Tiraths and remarkable places that were cradles of Bharatiya sabhyata.

Bharatiya Sanskriti (culture) evolved from Prakriti (nature), as is evident from our traditions, rituals, and celebrations, which coincide with the different seasons of nature and human life from conception to death. Centuries of tapasya (research) by Rishis (ancient scholars) led to comprehension of the universe and developed the philosophies and cultural understanding of the values of Mother Earth, our 'Dharti Ma'. This reverence is so embedded that many among us wake up with a prayer to Mother Earth.

समुद्रवसने देवी पर्वत स्तनमण्डले।
विष्णुपत्नि नमस्तुभ्यं पादस्पर्शं क्षमस्वमे ।।

O Devi (Oh Mother Earth), You, Who have the Ocean as Your Garments, and Mountains as Your Bosom, O Consort of Lord Vishnu, Salutations to You; Please Forgive my Touch of the Feet (on Earth, which is Your Holy Body).

This blessed mother earth, Bharata, was a perfect cradle to give birth to the core civilisation's wealth. The gift of this land's spiritual energy developed profound systems of knowledge that still baffle many scholars.

As Rishis decoded the 'Brahmaand', travelling across vast geographical landscapes to study the 'Prakriti', the evolution of life and, more importantly,

*Neera Misra is an Independent Researcher focused on Vedic and Mahabharata period history and culture, and its socio-cultural impacts. She is the Founder Trustee and Chairperson of Draupadi Dream Trust.

the meaning of life, they gained insight into every aspect of the sciences of life. Thus arose concepts of Vasudhaiva Kutumbakam and the four 'ashramas' of human behaviour and life systems—Brahmacharya, Grihastha, Vanaprastha and Sanyas. More profound perceptions of the functioning of the human psyche, mind and body, and affinities with nature led to the evolution of traditions of life management via the 16 'sanskaras' that cover the circle of life from material birth to death to mingling back to nature. Evolved rulers and rishis patronised and promoted the learnings of the four *Purusharthas* of *Kama*, *Artha*, *Dharma*, and *Moksha.* Such enriching eternal principles for the prosperity and well-being of all humanity were the unique contributions of this motherland.

In this context comes the sanctity of particular locations. We have unique texts known as *Mahatmya* for all such sacred places. They comprise relevant knowledge from the Vedas, Ramayana, Mahabharata, and Puranas. Details of important rulers, the mandirs, and events of Itihasa are narrated. The Ayodhya Mahatmya facilitated the resolution of the Ram Janam Bhoomi dispute.

Similarly, we have *Mahatmyas* of Kashi, Kampilya, Indraprastha, Mathura, Braj areas, Bhalka, Dwarka, Prayagraj, and many ancient places across Bharata. This reveals a well-documented repository of sacred spaces, termed Tiraths, Mandirs, etc. Reviving them is reestablishing this land's original identity and preserving it for posterity.

The 'mandirs' here were places of education, adhyatma (philosophy), and even centres of trade that followed dharmic principles. 'Tirath' implies places that evolved on the banks of rivers and water bodies and have historical and spiritual significance. Rivers have been the cradles of all civilisations. The *Nadi Sukta* of the *Rigveda* is considered the key to the sacred geography of Bharatavarsha[1].

गंगे ! चयमुने ! चौवगोदावरी! सरस्वती !
नर्मदे ! सिन्धु ! कावेरी ! जलैस्मिन्सन्निधिंकुरु ।।

(Rigveda 1.32.12)

Water bodies are the bedrock of our precious spiritual and historical geo-coordinates. Here developed iconic places and personalities having empowering influences since time immemorial, reflecting the times traversed from Vedic, Treta, Dwapar and Kalyuga, unfolding the trajectory of sacred landscapes of Bharata. Located within the Jambudweep continent, we learn how Bharata comprised almost all of South East Asia and much more. This article focuses on the current Bharata areas, left after being trampled upon and destroyed by invaders and colonial rulers and transformed by political ideologues. For brevity and priority, it highlights noteworthy sacred spaces that have reverberated in our hearts for centuries and reflect our nation's universal beliefs.

According to astronomical data from the Mahabharata, the Kurukshetra War of the Dwapar Yuga occurred around 3067 BCE.[2] The Ramayana, on the other hand, is set more than 2,000 years earlier. The Vedic Satayuga is believed to be even further in the past.

Prayagraj

Considering rivers have been the source and nourishing mothers of our sacred geography, a tribute to them is overdue. The landmark initiative

of restoring the original name of Prayagraj can be enriched if this most sacred confluence of our three significant rivers showcases their Itihasa. Interestingly, Yamuna is the sister of both Ganga, our 'sangini' through the earth, and Yam, the ruler of death. Along with Saraswati, representing knowledge, this 'Sangam' of three sacred rivers gets its significance with the Maha Kumbh Mela held here every 12 years. To pay tribute to our mother rivers, a '*Naadi Sukta*' *Darshan Kendra* at Prayagraj and *Floating Boat Museum* on rivers will be a value-added connection to the 'Prakriti-sanskriti' essence of Sanatan culture and awareness for sustainable environment protection.

The storyline could cover 'Avtaran', Itihasa, the lands they traverse, traditions, and rituals of culture and cuisine. This entwining of Prakriti and Manushya will be an exemplary initiative that instils reverence and respect for sacred spaces. Recreating the 'Saraswati journey of Balram' will highlight many lost and forgotten places on its holy banks and invigorate interest in the past.

Ganga River Tirath

Gyanvapi: River Ganga's 'jal' is integral in our lives from birth to death. Credited with the maximum number of holy sites, Ganga has the most profound connection to Shiva, who guided her path on earth. One of the most contentious and critical sacred spaces at Ganga banks is the Kashi Vishwanath Shivlinga. Destroyed on orders of the tyrant Aurangzeb, it awaits reclaim. For this reason, 'Nandi' has silently waited for centuries. The evidence of the original Shiva Linga screams out of the images on the walls of Gyanvapi, from Kashi's Itihasa, from Mughal texts, and most clearly from the face of Nandi facing the Shivalinga of his Lord therein. The scientific survey by the Archaeological Survey of India (ASI) has also confirmed the pre-existent ancient temple and Shivalinga here. The authorities concerned must respect the beliefs and evidence to facilitate and expedite the handing over of the holy place to the Kashi Vishwanath Mandir. The complex has a beautifully designed building but could be further enhanced with 'Prakriti' of sacred groves and Nakshatra trees that hold the key to environment cleanliness.

Kampilya: Sacred Ganga bestowed us with another ancient Tirath, the cradle of Vedic wisdom from time immemorial. Kampilya is the ancient Samrajya, when King Sudas was so powerful that he expanded his empire up to Punjab in the west and Saket in the east. He also defeated Samvaran, the father of Kuru, in Hastinapur. Kampilya is mentioned in Vedas, Ramayana, and Mahabharata and was the pivotal point of Adhatyatma. It had intellectual rulers who promoted scholars in lakhs and spread Vedic knowledge worldwide. Its scholars developed the structure of Vedic shlokas. Here evolved the Ayurvedic book Charac Samhita, the Karmakand, the original version of Kamasutra, the Upanishads, etc. Besides the Vedic lineage Kampilvasini Mandir, the Rameshwar Mandir was established by Shatrughan, brother of Sri Rama. In Dwapar, Draupadi established the Shiva Temple after her marriage, as she learns that Pandavs are Shiva's avatar and she is reincarnated Parvati.[3]

In 1920, Kampilya was among the centrally protected sites of the Archaeological Survey of India. However, 99% of its ancient heritage landmarks have been systematically destroyed,

stolen and subjugated with buildings by vested ideological/ political interests. The Gazette of Farrukhabad gives its importance as the birthplace of Maharani Draupadi. Draupadi Swayamvar was also solemnised here, which event reflects in the Uttar Pradesh state symbol. The antiquity and relevance of this holy Tirath have been downplayed despite volumes of evidence. This forgotten marvel symbolises the strength of Vedic knowledge and the glorified status of women in ancient Bharata. It is also famous as the birthplace of Varahmihir, the writer of Brihatsamhita, and credited with 27 Nakshatra mandirs of Mehrauli, Delhi.

Kampilya[4] has great antiquity and is home to Kampilyavasni Mandir, mentioned in Yajurveda.

प्राणाय स्वाहा मानाय स्वाहा स्यानाय स्वाहा।
अम्बेऽअम्बिकेऽ अम्बालिके नमा नयतिकश्चन।
स सस्त्यश्वकः सुभद्रिकां भद्रां काम्पील वासिनीम्।।
23/18

Kampilya is mentioned in the Balkand of Valmiki Ramayana, and Brahmadatta, the 12th descendant of the Ikahvaku dynasty, ruled here like Indra.

स राजा ब्रह्मदत्त स्तुपुरी मध्यवस त्तदा।
काम्पिल्या परयालक्ष्म्या देव राजोय
था दिवम्।। बालकाण्ड **33/19**

Somak, Sanjal, Durmukh, and Pravahan Jaivali were rulers of this line associated with Kampilya. The Shatapath Brahman mentions that King Kaivya and Durmukha performed Ashvamedh's sacrifice at Kampilya. The Mahabharata provides a detailed description of the city. Draupadi, the daughter of King Drupad, and his son Dristadyumna were born here (Mahabharata 1/166/39-44).

The commentator, Mahidhar, explained that the ladies of Kampilya were learned and beautiful. Mammat shares this view in his commentary on this verse.[5]

काम्पील वासिनीम्काम्पील नगरे
हिसुभगाः सुरूपाः स्त्रियो भवन्ति।

Yamuna River Tirath

The oldest recorded sacred places on the Yamuna River plains are Indraprastha, Mathura, Vrindavan, the Braj Kshetra, and Prayagraj. The antiquity and sacredness of any nation's Rajdhani gives deep insights into that country's eco-political importance and civilisation strength.

Indraprastha: Bharata's most ancient capital, Indraprastha, the 'Swarg' of Indra and Pandavansha, is now a city of graves transformed by people with ulterior motives.

Indraprastha dominated world trade and politics for the most prolonged period. UNESCO's World Heritage Day is a yearly celebration of the beauty of monuments and the *maintenance of their identity from their roots*. The greatest irony of celebrating any monument's 'identity from roots' is reflected in our Capital region. Do we celebrate the 'roots' of the most ancient sacred spaces here at Mehrauli - Yogmaya Mandir, the scientific wonder- Vishnugiri Stambh (Iron pillar), the 27 Nakshatra Mandir (astronomical observatory of Varahmir, whose location has ironically been a UNESCO site of 'medieval time and name'- Qutub Minar, even though it displayed an inscription of 28 temples). In the Mehrauli area were inscriptions of Shankarashana and the 1st BCE Ghosundi mentioning Narayana Vataka. These are the real roots of Bharata. Likewise, the most ancient Indraprastha Qila and the mandirs of

Pandavavansh or Raja Bhoja within this complex have never been celebrated on World Heritage Day. UNESCO and ASI have ignored the ancient Nigambodh Ghat, where the Vedas were revived, and the Nili Chhatri mandir of Sri Krishna at Rajghat. The Indraprastha Tirath points at Yamuna banks lie in a pathetic condition. Two ancient inscriptions are located at Safdarjung Tomb, but the roots are hidden and neglected.

Fortunately, traces of ancient legacies still exist, daring subjugation under medieval and colonial onslaught. The sacred landmarks of civilisation and ancient heritage legacies, the roots of our capital region, which is the face of Bharat to the world, need a facelift and a skyline of actual history. A tall statue of Yogeshwar Sri Krishna facing the Rashtrapati Bhawan or Sansad or at Kartavya Path will be an acknowledgement of his contribution as founder of Indraprastha and proponent of Kartavya.

The antiquity of Indraprastha, which was promoted by the moniker 'Delhi', denting its originality, is revealed in Indraprastha Mahatmya. The text records the vast geographical location of Indraprastha, mentioning Kashi at a distance of 21 Dhanush from its west point. It also tells us that it is as important a 'Tirath' as Haridwar, Prayagraj, Pushkar, etc.

The first mention of a sacred land area named Indra's land appears in the Narad Purana (pp 645-647) *and Vishnu Purana* (pp 870-875). Narsingha had killed Hirankashyap and saved Bhakta Prahalda. Subsequently, King Indradev was gifted with this 'Swarga' land, and Guru Brihaspati was advised to perform Yajnas and purify the Khandav Forest around the Yamuna River banks.[6] Brahma, Vishnu, and Mahesh blessed this Yajna, leading to its special sanctity. Sri Vishnu told Indra Devta to donate 'prasthas', or 48 handfuls of pearls/gems, to pious people after Yajnas. Prastha also means a plateau. The place where Indra gave 'prasthas' of wealth became Indraprastha. Honouring Indradev and antiquity, during Dwapara Yuga, Sri Krishna chose this holy land to be the central point of Pandava's Indraprastha Kingdom and its Rajdhani.

'Love your monuments; they are part of a rich civilisation and speak volumes about a bygone era'. It is a 'monumental' task to find the complete ancient remains of sacred spaces in an area that was deliberately trampled upon and, for centuries, systematically destroyed. This defeats the often-said view - "A rich cultural heritage depends on the ability of people to maintain their distinctiveness and unique identities".

Reclaim and Revive Subverted Sacred Spaces at Indraprastha

Nigam Bodh Ghat is actually 'Nigam' or place where Rishis once again 'recollected' the Vedic Knowledge, i.e. had 'Bodh'. How this specific place, at Yamuna River banks, was converted to a cremation is a mystery. The most significant event here was the auspicious 'Yajnas'. Special efforts to revitalise the original spiritual and philosophical character of the precious Nigam Bodh knowledge area, renaming the Zone as Nigam Bodh Kshetra by DDA, will be 'justice delayed but not denied'.

Indraprastha Pandav Kila has been popularised as Purana Qila to wipe out its original identity. Located at Mathura Road, the Ain-i-Akbari

mentions that Humayun settled here for a few years before Sher Shah Suri defeated him. Humayun returned victorious after years but died within a few months. The last Hindu ruler at Indraprastha was Hemu Chand, who defeated Akbar's army and crowned himself King there. This was a sought-after place because of its antiquity. The Sabha Parva of Mahabharata details its making, description of the grand forts with huge white walls secured by armed men, white double-storied buildings, and the beautiful lotus pond, which Duryodhana mistook for a carpet and fell in. Architects have recreated some perspectives of Indraprastha. Restoring some of the iconic structures at this Qila, its original white form, with the lotus pond, will be natural justice for the shaken roots of its historical legacy.

The Vishnugiri Hari Stambh (Iron Pillar) at the Qutub complex area, which has defied rust for centuries, is a testimony to ancient Bharata's expertise in metallurgy. Quoting mediaeval historian Firishta, historian Dr Ved Veer Arya has traced its antiquity to around 950 BCE. Highlighting this and the redevelopment of the 27 Nakshatra Mandir, the Astronomical Observatory of Varahamir will nourish the natural heritage legacies of the National Capital Territory (NCT). Indraprastha, the first urban city of North Bharata, had deep links to Mathura Dham and Braj Kshetra.

Mathura is one among the Saptrishi or seven holy cities, and Mokshyadayni Tirath. The Ramayana credits Madhu of the Yadu tribe as the founder of Mathura and narrates how Shatrughna defeated his son Lavanasura and ruled here. Though the whole Brajkshetra circuit has great spiritual and historical significance, the most sacred land is the birthplace of Sri Krishna at the Kesava Deo Temple. This and the Dwarkadhish Temple display the beauty of traditional Indian temple architecture. The destruction of the sacred Krishna Janmabhoomi temple, the holiest place for all Sanatanies, is a continuous thorn in our hearts. The process of reclaiming Sri Krishna's birthplace has been initiated, yet the troublemakers keep denting the efforts. Like Ram Janmbhoomi, Krishna Janmbhoomi awaits a grand revival, with government and well-meaning citizen devotees sincerely fulfilling their responsibilities. We are all eager to see the majestic Keshav Deo Mandir revived and re-energised to bless devotees. It is good news that Mathura has been chosen as a city for the Government of India's Heritage City Development and Augmentation Yojana scheme. This will stimulate interest in Itihasa.

Our sacred spaces have given spiritual enlightenment because they were 'grounded' with 'sacred groves'. Such virtuous places need greenery of Nakshatra Bagh, flower gardens, and widespread space with shades of the traditional trees that are endemic to climate management. Pilgrims need shaded relaxing areas. The proposed Braj Corridor has to avoid the complete tiling that inconveniences pilgrims walking during summer or rainy season. Equally critical is the redevelopment and beautification of the riverfront and river waters across Mathura. The twenty-five ancient Ghats have Vishram Ghat at the centre, where Sri Krishna rested before departing for Dwarika. It also has the temple of Charchika Devi, whose inscription has been found at Vidisha mandir, Madhya Pradesh. The revered and spiritual feel of Vrindavan Riverfront Ghats could be enriched with good landscaping by reclaiming it.

'Pavan Bhumi' Brajmandal carries forward the Vedic, Treta, and Dwapara legacies. Prioritising, reclaiming, and reviving this place of antiquity will nourish our 'Dharovar'. The Goverdhan Parikrama and the Brajmandal Parikrama could use a beautification plan and be improved for pilgrims' ease.

Kurukshetra: This is our connection to the sacred land of Bhagawad Gita, the Dharma Kshetra- Kurukshetra. Besides the Brahma Sarovar and the Gita Museum at Jyotisar, much more is required to generate awareness about the deep roots of civilisation linked to the Saraswati River. Excavations in the Indus-Saraswati areas have revealed Vedic Gyan Vigyan. Kurukshetra also has a 48 kos Parikrama, considered very sacred in our texts. An exciting revival could be the recreation of the 'Saraswati journey of Balram' even here. This can revitalise many sacred lands mentioned in the Mahabharata.

धर्मक्षेत्रे कुरुक्षेत्रे समवेतायुयुत्सवः।
मामकाः पाण्डवाश्चैव किम कुर्वत संजय।। 1/1।।

हे संजय! जब मेरे और पाण्डु के पुत्र युद्ध करने की इच्छा से कुरुक्षेत्र की पुण्य–भूमि में एकत्रित हुए तब उन्होंने क्या किया?

Heritage of Kashmir: Rishi Kashysap's land, Kashmir, has many sacred spaces of high academic and spiritual wealth. Among the three holiest shrines of Kashmir, along with Amarnath, are two precious pilgrimage sites, the Martand Mandir and Shardapeetham. Martand Mandir was destroyed in the 13th century by Sikandar Shah Miri to Islamise and subjugate the locals. Historian Kalhan credits Lalitaditya Muktapida for having commissioned its making in 8 CE at Anantnag. It is devoted to Surya, a prime deity of the Sanatan faith, and is now dilapidated despite ASI patronage. ASI has had no objections to the 'renovations and beautification' of mediaeval heritage but prevents the revival and reconstruction of Sanaran sacred buildings.

Kashmir is so integrally linked to Shardapeeth's spiritual ethos that it gained the moniker of *Sharda Desh*. Situated near Neelam / Krishna River, Shardapeeth is also a *Maha Shakti* Tirth, the traditional location of Devi Sati's right arm. Around 6th – 12thCE, it was among the most prominent Temple universities of Akhand Bharata. Historical texts like Rajatarangini, traditional scriptures, and Al-Biruni's chronicle reveal how it was the most sought-after university, enriched by a well-stocked library and Vedic scholars. Shankaracharya's were trained and selected here. Currently, its ruins are in Pak-Occupied Kashmir, about 10 km from the border. Till Bharat regains its entire Kashmir lands, an arrangement can be initiated for devotees' visits on the lines of the Kartarpur Sahib Sikh shrine in Punjab across the Indo-Pak border.

Conclusion

Reading historical texts of Muslim invaders or modern thinkers like Sitaram Goel, we learn of the unending list of lakhs of sacred spaces of our Itihasa that were mutilated and superimposed with mediaeval structures. Many have been completely transformed, while some are deliberately kept in ruins to show the vicious subjugation done across the north, east and west of Bharatvarsha, a region that bore the brunt of attacks. Places of remotest antiquity are the roots awaiting nourishment to bring alive our tree of civilisation. Controversial Black American nationalist political activist Marcus

Garvey authenticates it as: "A people without the knowledge of their past history, origin and culture is like a tree without roots". American Author Steve Berry's quote indicates the move ahead for Bharata - "A concerted effort to preserve our heritage is a vital link to our cultural, educational, aesthetic, inspirational and economic (*scientific*) legacies—all of the things that quite literally make us who we are". Our sacred geography, traced from Nadi Sukta, the Mahatmyas and various historical texts, encompasses geo-coordinates to all these subjects of values. For current 'India' quoting from our traditional sources would bracket this article into the 'Hindu revival' remark of late J.L Nehru made to subvert reconstruction of Somnath Mandir.

References:

1 *Prof. Deen Bandhu Pandey has also referred to the Narada Purana shloka (नारदपुराण, 1.27.33) naming the major rivers.*

2 *The Mahabharata Revisited, 2012, Chapter 5, Prof. Narhari Achar.*

3 *Kampilaya Mahatamaya, 2003, translated by Durga Datta & Corrado Puchetti, D.K Prints*

4 *The early rulers of Kampil relating to* **Krivi** *(Rigveda 1/30/1, 8/2/24, 8/22/12, 8/87/1, 9/9/6),* **Turvasu** *(Rigveda 1/36/18, 5/31/8, 6/20/12, 8/4/7, 10/49/8)*, **Keshin** *(Shatapath Brahman 11/8/4/6)*, **Shrinjai** *(Rigveda 4/15/4, 6/27/7, 6/47/22) and* **Somak** *families are frequently mentioned in Vedic literature.*

5 *Prof D.P. Tewari Report Kampilya Excavation 2010-12*

6 *63, 64 in pages 174 and 175 of, Sing, Om Prakash, 2013, Adi Patrakar Narad aur Unki Patrakarita, Classical Publishing Company, New Delhi.*

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Unveiling Bias: Governance Structures in India's Religious Institutions

Yashawardhana*

Introduction

In a move that has sparked significant debate, the Union government has recently proposed amendments to the Waqf Act, 1995, which governs the administration of Waqf properties in India.[1] The proposed amendments, which are expected to be tabled in the 2024 Monsoon Session of Parliament, include several fundamental changes that have far-reaching implications for managing Waqf properties.[2] Among these is the proposal to strip the Waqf Boards of their powers to declare a property as Waqf.[3] Under the current Act, Waqf Boards have the authority to unilaterally identify and declare properties as Waqf, which then brings these properties under the Board's management.[4] The proposed amendment transfers this power to the district collector, who would be an arbiter in determining whether a property is Waqf or government land.[5]

India's religious landscape is as diverse as it is intricate, with many faiths coexisting within its borders. Religion plays a pivotal role in the lives of its people, influencing culture, politics, and social dynamics. However, the governance of religious institutions in India, particularly under the Waqf Act and the state control of Hindu temples[6], reveals a complex interplay of power, politics, and faith. These governance structures are not merely administrative frameworks; they reflect deep-rooted biases, historical legacies, and ongoing struggles for autonomy and control.

The Waqf Act of 1995, which governs the management of Islamic endowments, and the state laws that regulate Hindu temples provide a lens through which we can examine the broader issues of religious freedom, secularism, and state intervention in India. The recent amendments to the Waqf Act have brought these issues to the forefront, sparking debate nationwide.

These proposed changes to the Waqf Act raise broader questions about the governance structures of religious institutions in India and the state's role in managing religious affairs. The proposed amendments, aiming to enhance state oversight and regulation, represent a necessary step towards addressing the shortcomings of the traditionally self-governing Waqf system, which has often needed more transparency and accountability.

This development is not unique to the Waqf system; it reflects a larger pattern of state involvement in the governance of religious institutions in India, as seen in the state control of Hindu temples under various state laws. The proposed changes to the Waqf Act thus provide an opportunity to examine the biases and inconsistencies in the governance of religious institutions in India and to consider the implications of these structures for religious freedom,

*Yashawardhana is a Research Fellow at India Foundation. He holds a degree in BA LLB (Hons) from Jindal Global Law School.

secularism, and the autonomy of religious communities.

This article explores the governance structures of religious institutions in India, focusing on the Waqf Act and state control of Hindu temples. It examines the historical context and evolution of these governance structures, analyses the biases they perpetuate, and considers their implications for the broader Indian society. It aims to shed light on the complex interplay between religion, politics, and state power in India and contribute to the ongoing debate on the state's role in managing religious affairs.

Historical Context of Waqf

The Waqf system in India has a long and complex history that reflects the country's evolving dynamics of religious, social, and legal structures. Waqf, which refers to the dedication of property for religious or charitable purposes, has played a significant role in the socio-economic and religious life of Indian Muslim communities. However, the functioning of the Waqf board and the management and governance of Waqf properties have raised many issues of concern. Understanding the Waqf Act's historical context and ongoing challenges is crucial for grasping the current debates surrounding its proposed amendments.

The concept of Waqf originates in early Islamic law, where it was established to provide for religious and charitable activities. A Waqf is typically a perpetual endowment, meaning that once a property is dedicated as Waqf, it cannot be sold, inherited, or otherwise transferred. The income generated from Waqf properties is to be used in accordance with the donor's intention. It is usually allocated to fund mosques, religious education, healthcare, and other social welfare activities.

In India, the Waqf system was introduced during the early Islamic conquests and was further institutionalised during the Mughal period. The Mughal rulers and their nobles established numerous Waqf properties across the subcontinent, ostensibly dedicating significant tracts of land and wealth to religious and charitable causes. These Waqf properties were managed by trustees known as Mutawallis. However, the Waqf system in India was often plagued by mismanagement and lack of accountability. The decentralised nature of Waqf administration and the absence of a formal legal framework led to frequent disputes over property ownership and the misuse of Waqf assets. These challenges became more pronounced with the advent of British colonial rule in India.

The British colonial administration sought to regulate the Waqf system through formal legislation. The first significant legal intervention came with the Bengal Regulation XIX of 1810, which allowed the British government to take control of Waqf properties if they were found to be mismanaged.[7] This regulation began a series of colonial efforts to control religious endowments, which were viewed as potential sources of revenue and influence.

In 1863, the British introduced the Religious Endowments Act, which extended state control over Waqf properties and allowed the government to appoint trustees for their management.[8] This Act was met with resistance from the Muslim community, which viewed it as an infringement on their religious autonomy. The dissatisfaction with British policies regarding Waqf properties

culminated in the enactment of the Mussalman Waqf Validating Act of 1913.[9] This Act recognised the legal validity of Waqf-alal-aulad, or family Waqfs, where the income from the endowment could be used to support the donor's descendants.[10] The 1913 Act was a significant milestone in the legal history of Waqf in India, providing a more transparent legal framework for administering Waqf properties.

However, the colonial administration's attempts to regulate Waqf were often inconsistent and poorly implemented, leading to continued corruption, mismanagement, and encroachment on Waqf lands. The British focus on revenue generation frequently conflicted with the religious and charitable purposes of Waqf properties, exacerbating the challenges faced by the system.

After India gained independence in 1947, the new government recognised the need to reform the administration of Waqf properties to address the issues inherited from the colonial period. The Waqf Act of 1954 was the first significant post-independence legislation to centralise the administration of Waqf properties under state Waqf Boards.[11] These Boards oversaw Waqf properties' registration, maintenance, and development, ensuring they were used for their intended religious and charitable purposes.

The 1954 Act, however, was plagued by significant implementation challenges, mainly due to the Waqf system's resistance to oversight and transparency. The failure to adequately enforce the Act's provisions for the mandatory registration of Waqf properties led to rampant underreporting and widespread encroachment on Waqf lands. These persistent issues underscored the need for stricter reforms, culminating in the Waqf Act 1995.[12]

The Waqf Act of 1995 sought to strengthen the regulatory framework for Waqf administration by making the registration of all Waqf properties mandatory and establishing Waqf Tribunals to adjudicate disputes related to Waqf properties.[13] The Act also created the Central Waqf Council, which was responsible for advising the government on Waqf matters and monitoring the functioning of the state Waqf Boards.[14]

Despite these reforms, the Waqf system in India continued to face significant challenges. Corruption, mismanagement, and illegal encroachments on Waqf properties persisted, and the Waqf Boards were often criticised for their lack of transparency and accountability.[15]

The *Waqf (Amendment) Act, 2013* granted Waqf Boards the authority to declare properties as Waqf, even if not previously listed, and shifted the burden of proof to property owners.[16] This allowed Waqf Boards to claim ownership, requiring individuals to prove otherwise in legal disputes. The amendment's broad powers and the shift in responsibility led to significant concerns over potential misuse and unjust property claims. The law gave the Waqf Boards considerable power, often at the expense of private property rights and was downright ludicrous in substance.

The ongoing challenges in administering Waqf properties have led to calls for further reforms, culminating in the recent proposals to amend the Waqf Act. These proposed amendments, which include stripping the Waqf Boards of their powers to declare properties as Waqf and introducing non-Muslim members into the Waqf Boards, have

sparked controversy and debate. Critics argue that these changes could undermine the autonomy of the Waqf system and facilitate the government's control over Waqf properties. In contrast, proponents claim they are necessary to improve transparency, accountability, and governance.

The historical context of the Waqf system in India, from its origins in Islamic tradition to the challenges of colonial and post-independence governance, underscores the complexity of these issues. As the debate over the proposed amendments to the Waqf Act continues, it is essential to consider both the historical legacy and the contemporary challenges facing the Waqf system to chart a path forward that respects religious autonomy while ensuring effective governance.

Historical Context of Governmental Control of Hindu Temples

In India, the state's management and control of Hindu temples have long been a subject of intense debate and controversy. Unlike Islamic Waqf properties, managed by community-based Waqf Boards, Hindu temples in many states are directly controlled and administered by the government. This state control, rooted in both colonial practices and post-independence legal frameworks, has raised significant questions about religious autonomy, the role of the state in religious affairs, and the implications for secularism in India.

The origins of state control over Hindu temples can be traced back to the British colonial period. In its quest to control India's vast religious and cultural landscape, the British administration began to regulate temple revenues and administration. This was done under the pretext of preventing mismanagement and ensuring that temple funds were used for public welfare rather than being appropriated by corrupt or inefficient temple authorities. The British enacted several laws to regulate temple administration, including the Madras Religious Endowments Act of 1863, which allowed the government to assume control of temple revenues and appoint trustees to manage temple affairs.

This colonial intervention set a precedent for state involvement in religious institutions, a practice carried forward into the post-independence period. The British rationale of ensuring good governance and preventing corruption was used to justify continued state control despite the end of colonial rule. This control has persisted in various forms, with different states enacting laws to regulate the management of Hindu temples and their properties.

After India gained independence in 1947, several states enacted laws to formalise government control over Hindu temples. One of the most significant pieces of legislation in this regard is the Tamil Nadu Hindu Religious and Charitable Endowments (HR&CE) Act of 1959.[17] This Act gives the state government extensive powers over the administration of Hindu temples, including appointing trustees, overseeing temple finances, and even managing temple rituals.[18]

Under the HR&CE Act, the government is authorised to appoint Executive Officers to manage the day-to-day operations of temples.[19] These officers are responsible for ensuring that temple funds are used in accordance with the law and for the benefit of the community. The Act also allows the government to take over a temple's

administration if it is mismanaged or allegations of financial irregularities exist.[20] In practice, this means that the state can exert significant control over the administration of temples, including decisions about how temple funds are allocated and spent.

Tamil Nadu is not unique in this regard. Other states, particularly in South India, have similar laws allowing extensive government control over Hindu temples. For example, the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act of 1987 provides for state oversight of temple finances and management.[21] In Karnataka, the Hindu Religious Institutions and Charitable Endowments Act of 1997 gives the state similar powers to regulate temple administration.[22]

The state control of Hindu temples has been a source of ongoing controversy and legal challenges. Critics argue that state intervention in temple administration violates the fundamental right to freedom of religion, as enshrined in the Indian Constitution. They contend that the government's involvement in religious affairs undermines the autonomy of religious institutions and is inconsistent with the principles of secularism.

One of the central criticisms of state control is that it has led to the mismanagement and exploitation of temple resources. There have been numerous allegations of corruption and financial irregularities in the administration of temples, with temple funds being diverted for purposes unrelated to the religious or charitable activities for which they were intended. Critics also argue that the government's control over temple administration has eroded the traditional role of temple priests and trustees, who have historically been responsible for managing temple affairs.

Several legal challenges have been brought against state control of temples, with petitioners arguing that such power is unconstitutional. In some cases, the courts have upheld the constitutionality of state intervention while also emphasising the need for the government to respect the religious autonomy of temples. For example, in the landmark case of *Seshammal v. State of Tamil Nadu*[23], the Supreme Court of India upheld the HR&CE Act. Still, it cautioned that the state must not interfere with religious practices and rituals.

Despite these rulings, the debate over state control of temples remains unresolved. Proponents of state intervention argue that it is necessary to prevent the misuse of temple funds and ensure they are used for the public good. They contend that government oversight is justified in cases where temples are found to be mismanaged or where there are allegations of financial irregularities.

The issue of state control of Hindu temples raises broader questions about the relationship between religion and the state in India. On one hand, the state's involvement in temple administration can be seen as a violation of the principle of religious autonomy, a cornerstone of secularism. On the other hand, proponents of state control argue that the government has a legitimate interest in ensuring that religious institutions are managed to serve the public interest.

The selective nature of state control, where Hindu temples are subjected to extensive government oversight while religious institutions of other communities, such as mosques and churches, enjoy greater autonomy, has justifiably

led to accusations of bias and discrimination. This disparity has fuelled ongoing debates about the role of the state in religious affairs and the need for a more consistent and equitable approach to the governance of religious institutions in India.

Legality and Constitutional Implications of the Waqf Act and State Control of Hindu Temples

India's legal and constitutional framework is designed to ensure equality, secularism, and non-discrimination. However, the governance of religious institutions, particularly under the Waqf Act for Muslim endowments and state control of Hindu temples, raises significant concerns regarding the principles of equality and secularism. The Waqf Act has been criticised for providing preferential treatment to Muslim religious institutions, while the state control of Hindu temples has been seen as discriminatory against the Hindu community. This section examines both governance structures' legal and constitutional implications, using relevant cases and legal principles to highlight the disparities.

Waqf Act and Its Constitutional Challenges

The Waqf Act, 1995, as amended in 2013 and with proposed amendments in 2024, provides a unique governance structure for Islamic endowments in India. Once declared, Waqf properties are managed by state Waqf Boards, which have considerable autonomy and power over these assets. This governance structure, however, raises several constitutional concerns, particularly regarding Article 14 (Right to Equality)[24] and Article 27 (Freedom from taxation for promotion of any religion)[25] of the Indian Constitution.

Article 14 and the Principle of Equality. Article 14 of the Indian Constitution guarantees the right to equality before the law and equal protection of the laws to all citizens.[26] The Waqf Act, however, grants a special status to Muslim religious endowments, with state Waqf Boards enjoying substantial autonomy in managing these properties. This special status has been widely criticised for undermining the principle of equality, as it grants preferential treatment to one religious community at the expense of fairness and uniformity under the law.

In several cases, the Supreme Court of India has emphasised the importance of equality and non-discrimination. In the State of West Bengal v. Anwar Ali Sarkar (1952) case, the Court held that any classification under law must be reasonable and not result in arbitrary discrimination. The Waqf Act's provisions, which allow for the exclusive management of Muslim endowments by state Waqf Boards, can be seen as creating an unreasonable classification that privileges one religious community over others, thereby violating Article 14.

Article 27 and State Funding of Waqf. Article 27 of the Constitution prohibits the state from compelling any person to pay taxes for the promotion or maintenance of any particular religion.[27] However, the Waqf Act allows public funds to manage Waqf properties and the functioning of Waqf Boards. This has sparked concerns that the state may be indirectly endorsing a particular religion, potentially violating the spirit of Article 27 and compromising the secular foundation of the nation.

In *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*[28], the Supreme Court held that the state could not use public funds to support religious activities. The Waqf Act's provision for state funding of Waqf Boards could be seen as contravening this principle, as it allows taxpayer money to support the administration of Islamic endowments.

State Control of Hindu Temples: Discrimination and Legal Precedents

While the Waqf Act grants significant autonomy to Muslim religious institutions, the state control of Hindu temples under various state laws is seen as discriminatory against the Hindu community. Unlike Waqf properties, which are managed by community-based boards, Hindu temples in several states are directly controlled and administered by the government. This disparity has led to accusations of discrimination and has been challenged on constitutional grounds.

Article 25 and Freedom of Religion. Article 25 of the Indian Constitution guarantees all individuals the freedom of conscience and the right to freely profess, practice, and propagate religion.[29] However, the extensive state control over Hindu temples has been criticised as an infringement on the religious autonomy of the Hindu community.

In the landmark case of *S.P. Mittal v. Union of India*[30], the Supreme Court held that the right to manage religious institutions is integral to the freedom of religion guaranteed under Article 25. The state control of Hindu temples, which includes the appointment of government officials to manage temple affairs and the use of temple funds for secular purposes, can be seen as a violation of this right.

Furthermore, in *Sri Venkataramana Devaru v. State of Mysore*[31], the Supreme Court ruled that religious denominations have the right to manage their own affairs in matters of religion. The state's involvement in the administration of Hindu temples, particularly in the management of temple rituals and finances, could be seen as a violation of this right, as it interferes with the religious autonomy of Hindu communities.

Article 26 and the Right to Manage Religious Affairs. Article 26 of the Constitution guarantees every religious denomination the right to establish and maintain institutions for religious and charitable purposes and to manage its affairs in matters of religion. The state control of Hindu temples, mainly through laws like the Tamil Nadu HR&CE Act of 1959, has been challenged as a violation of this right.

In *Seshammal v. State of Tamil Nadu*[32], the Supreme Court upheld the constitutionality of the HR&CE Act but emphasised that the state must not interfere with religious practices and rituals. However, critics argue that the state's extensive control over temple administration, including appointing trustees and managing temple funds, effectively undermines the autonomy guaranteed under Article 26.

Disparity and Discrimination. The selective application of state control, where Hindu temples are subjected to extensive government oversight while religious institutions of other communities, such as mosques and churches, enjoy greater autonomy, has led to accusations of discrimination.

This disparity is stark compared to the autonomy Waqf properties enjoy under the Waqf Act.

In *N. Adithayan v. Travancore Devaswom Board*[33], the Supreme Court observed that any state action must be consistent with the principles of equality and non-discrimination. The state control of Hindu temples, which is not applied to religious institutions of other communities, raises questions about the constitutionality of such selective intervention.

Unveiling the Hypocrisy and Charting a Way Forward

The governance structures of religious institutions in India, particularly under the Waqf Act and the state control of Hindu temples, reveal a deeply entrenched and systematic bias in the application of state power, which has long favoured specific religious communities over others. On the one hand, the Waqf Act grants sweeping autonomy to Muslim religious endowments, allowing them to manage vast swathes of property with little to no governmental oversight. This autonomy has not only facilitated the accumulation of considerable wealth and influence by Waqf Boards but has also fostered an environment ripe for misuse, corruption, and the exploitation of legal loopholes. The unchecked power wielded by Waqf Boards has led to widespread concerns about preferential treatment, especially when juxtaposed with the extensive state control over Hindu temples, where the religious autonomy of the Hindu community has been systematically undermined and eroded.

The stark contrast between the treatment of Waqf properties and Hindu temples highlights a disturbing double standard. While Waqf Boards operate with minimal interference, often acting as a law unto themselves, Hindu temples are subjected to oppressive state control, where temple revenues are frequently diverted for secular purposes, and the religious rights of the Hindu community are trampled upon. This disparity in governance not only violates the principle of equality but also reflects a broader agenda of appeasement and favouritism that has been perpetuated under the guise of secularism.

The Places of Worship (Special Provisions) Act of 1991 further exacerbates this systemic bias by freezing the status of religious places as they were on August 15, 1947. Although this Act is often portrayed as a measure to preserve communal harmony, in reality, it has disproportionately targeted Hindu claims on religious sites, such as the Kashi Vishwanath Temple and the Krishna Janmabhoomi, while conveniently protecting the status quo of Islamic structures that were often erected on the ruins of Hindu temples. This legal freeze has effectively cemented historical injustices, denying the Hindu community the right to reclaim and restore their sacred sites while shielding the symbols of past conquests under the pretext of maintaining peace.

In this context, the proposed 2024 amendments to the Waqf Act represent a long-overdue and necessary intervention to address some of these deep-rooted inequities. By stripping Waqf Boards of the unilateral power to declare properties as Waqf, the amendments seek to curtail the rampant misuse of this authority, which has often been exercised without due process or accountability. The introduction of non-Muslim members into Waqf Boards is another critical measure aimed at

breaking the monopolistic control that has allowed these bodies to operate in a cloak of secrecy. These changes are designed to enhance transparency, accountability, and fairness in the management of Waqf properties, ensuring that these assets are not misappropriated or used to further sectarian interests at the expense of the broader community.

Moreover, the involvement of district collectors as arbiters in disputes over Waqf properties introduces a much-needed impartial mechanism to prevent the wrongful declaration of properties as Waqf. This step is crucial in safeguarding public and private lands from being unjustly claimed under the guise of religious endowment, a practice that has been rampant and unchecked for far too long. By bringing state resources and legal scrutiny to bear on the management of Waqf properties, these amendments aim to dismantle the fortress of impunity that has surrounded Waqf Boards for decades.

While these changes are a welcome and necessary step toward correcting the glaring imbalance in the governance of religious institutions in India, they are only a beginning. For true equity and secularism to prevail, a broader reform must address systemic inconsistencies and entrenched biases across all religious communities. A uniform legal framework that applies consistent principles to the governance of all religious institutions, whether Hindu temples, waqfs, or churches, is essential. Such a framework would ensure that religious communities' autonomy is respected while guaranteeing that the state's involvement is just, non-discriminatory, and aligned with the constitutional principles of equality and secularism.

Conclusion

As India continues its journey as a secular democracy, the governance of its religious institutions must reflect the values of fairness, justice, and respect for all faiths. The ongoing debate over the Waqf Act and state control of temples provides an opportunity to rethink and realign these structures in a manner that upholds the true spirit of secularism—one that treats all religions with equal regard, without prejudice, and without allowing any community to dominate or exploit the system at the expense of others. The time has come to dismantle the systemic biases that have long plagued the governance of religious institutions in India and to establish a framework that ensures justice, transparency, and equality for all.

References:

1 *Waqf Act 1995 (as amended by the Waqf (Amendment) Act 2013)*

2 *'Proposed Changes to Waqf Law: What are the Controversial Amendments?'* The Indian Express *(New Delhi, 5 August 2024) https://indianexpress.com/article/explained/explained-law/proposed-changes-to-waqf-law-9503596/ accessed 12 August 2024*

3 *ibid*

4 *Waqf Act 1995 (as amended by the Waqf (Amendment) Act 2013)*

5 *'Proposed Changes to Waqf Law: What are the Controversial Amendments?'* The Indian Express *(New Delhi, 5 August 2024) https://indianexpress.com/article/explained/explained-law/proposed-changes-to-waqf-law-9503596/ accessed 12 August 2024*

6 *Places of Worship (Special Provisions) Act 1991*

7 *Bengal Regulation XIX of 1810*

8 *Religious Endowments Act 1863*

9 *Mussalman Wakf Validating Act 1913*

10 *ibid*

11 *Waqf Act 1954*

12 *Waqf Act 1995*

13 *ibid*

14 *ibid*

15 *In 2011, the Shahi Imam of Delhi's Jama Masjid, Syed Ahmed Bukhari, controversially claimed that the land on which the Indian Parliament stands was originally Waqf property. This assertion was widely criticized and dismissed as it had no legal or historical basis. The Karnataka Waqf Board was accused of illegally claiming over 54,000 acres of private and public land as Waqf property, leading to significant public outcry and legal challenges.*

16 *'Waqf Act,1995: A Tool given to Waqf Boards to Snatch the Property of Hindus/?' (*Times of India Blog*, 26 September 2022) <https://timesofindia.indiatimes.com/blogs/myview/waqf-act1995-a-tool-given-to-waqf-boards-to-snatch-the-property-of-hindus/> accessed 20 August 2024*

17 *Tamil Nadu Hindu Religious and Charitable Endowments (HR&CE) Act 1959*

18 *ibid*

19 *ibid*

20 *ibid*

21 *Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1987*

22 *Karnataka Hindu Religious Institutions and Charitable Endowments Act 1997*

23 *Seshammal v. State of Tamil Nadu [1972] 2 SCR 920*

24 *Article 14 of The Constitution of India*

25 *Article 27 of The Constitution of India*

26 *Article 14 of The Constitution of India*

27 *Article 27 of the Constitution of India*

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India's Criminal Justice Overhaul: A Deep Dive into the New Laws

Somesh Goyal*

The three new criminal laws came into effect on July 1, 2024, ushering significant changes to the country's criminal justice system and ending colonial-era legislation. The Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam have replaced the British-era Indian Penal Code of 1860, Code of Criminal Procedure of 1973, and Indian Evidence Act of 1872, respectively.

The law ministry has announced that any reference to the now-replaced Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Evidence Act in any statute, ordinance, or regulation would be interpreted as a reference to the new criminal justice laws. These old laws were replaced by the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA) on July 1. The legislative department of the law ministry has issued a notification under the General Clauses Act to this effect. An official clarified that the notification reaffirms the provisions of the General Clauses Act, which addresses the repeal and re-enactment of laws.

The enforcement of the laws has evoked mixed responses from different quarters and stakeholders. A few PILs were filed in the Apex Court to derail or delay the implementation of the laws that seek to modernise the criminal justice system and make justice more accessible for ordinary citizens. Chief Justice of India DY Chandrachud has openly advocated fast-tracking of trials from every conceivable platform and has aggressively worked to introduce technology in the judicial process to deliver faster justice and reinforce the faith of the people in the judiciary. The Supreme Court refused to entertain any of these PILs.

There was a litany of newspaper articles and social media onslaught about the new criminal laws, accusing the Central Government of rushing the job without adequate discussion and consensus among the stakeholders. Some naysayers among the critical stakeholders in the criminal justice system, particularly retired police officers, lawyers, academia, and a few non-profits, sought to castigate the government initiative on one or the other pretext. However, they all failed to muster public opinion against the new laws.

Background

On August 15, 2022, while addressing the nation from the ramparts of the Red Fort on India's

Shri Somesh Goyal is an IPS officer of the 1984 batch allocated to Himachal Pradesh. He is a former Director General of Police with over 37 years of experience having served in the Police, Prisons, and CAPFs like SPG, NSG, BSF, and SSB. He is known for excellent operational innovation and has won a host of awards including, the President's Police Medal, the Police Medal for Meritorious Service, Kathin Sewa Medal with Bar, and Maharana Pratab Trophy for Best Border Management. He is a post-graduate in English Lit. and Journalism & Mass Communication. He is an alumnus of National Defence College.

76th Independence Day, Prime Minister Narendra Modi talked about the **'Panch Praan' for the coming 25 years (Amrit Kaal)**. Elaborating on the second Praan, he said, "In no part of our existence, not even in the deepest corners of our mind or habits, should there be any ounce of slavery. It should be nipped there itself. We have to liberate ourselves from the slavery mindset, which is visible in innumerable things within and around us. This is our second Praan Shakti." He also said, "In this Azadi Ka Amrit Kaal, new laws should be made by abolishing the laws which have been going on from the time of slavery."[1]

All the ministries were asked to identify obsolete provisions from the colonial era and draft new legislation that fulfilled the aspirations of a resurgent India. The Central Government has repealed over 1,500 archaic laws in the last decade. These three criminal laws are the result of such an endeavour.

The new laws address contemporary social realities and crimes while aligning with the ideals enshrined in the Constitution. Union Home Minister Amit Shah, who introduced the laws, stated that the new legislation prioritises justice over penal action provisioned in the colonial laws. "These laws are made by Indians, for Indians, and by an Indian Parliament, marking the end of colonial criminal justice laws," Shah said. The "soul, body, and spirit" of the new laws are distinctly Indian, he added.[2] Shah explained that justice encompasses both the victim and the accused, and the new laws aim to ensure political, economic, and social justice with an Indian ethos.

Decolonisation rhetoric aside, there is consensus that the three new laws address the contemporary requirements of defining crimes, processes, and indictments, relying on the principles of justice as opposed to the retribution of the old laws. Justice would be delivered "up to the level of the Supreme Court" within three years of registering an FIR.

The Positives

The new laws positively impact the criminal justice system because wide-ranging consultations were held with legislators, judicial and legal pundits, police and corrections leadership, academia, NGOs and other stakeholders. According to the Union Home Minister, these laws were discussed in the Lok Sabha for 9 hours and 29 minutes and in the Rajya Sabha for 6 hours and 17 minutes. Suggestions were sought from all MPs, Chief Ministers, Supreme Court and High Court Judges, IPS officers and Collectors in 2020. The Minister attended 158 consultative meetings to prepare these Bills. The bills were later sent to the Home Ministry committee, which has representatives from all major political opposition parties. The Committee discussed the Bill for about three months. Most of the suggestions for reforms in criminal laws were incorporated, except four, which the Central Government found were political. This consultative process convincingly debunks the allegations of lack of discussion and hasty passage of the bills.

The new laws make critical changes at four levels of the whole criminal justice procedure:

- At the substantive crimes/offences level under BNS.
- At the Police investigation level.
- At the judicial magistrate level, and finally,

- At the Trial level.

The BNS is much shorter than the IPC. Redundant sections have either been pruned, merged or simplified, reducing the number of sections from 511 in the Indian Penal Code to 358. For example, definitions previously scattered across sections 6 to 52 are now consolidated into one section. Eighteen sections have been repealed, and four relating to weights and measures are now covered under the Legal Metrology Act of 2009. Some still criticise the new acts as colonial for retaining nearly 75% of the old sections.

New provisions address issues like false promises of marriage, gang rape of minors, mob lynching, and chain snatching, which the old Indian Penal Code did not adequately cover. A new provision addresses the abandonment of women after making sexual relations under a false promise of marriage.

Snatching, defined in Clause 304(1), is one of the 'new' crimes, distinct from theft. The definition reads: "In order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any moveable property". Both theft and snatching prescribe a punishment of up to three years in jail.

All state governments are now mandated to implement witness protection schemes to ensure the safety and cooperation of witnesses, enhancing the credibility and effectiveness of legal proceedings. The definition of "gender" now includes transgender individuals, promoting inclusivity and equality.

Another notable addition to the BNS is the inclusion of offences such as organised crime and terror, previously in the ambit of specific stringent laws like the Unlawful Activities Prevention Act for terrorism and state-specific laws such as the Maharashtra Control of Organised Crime Act for organised crime. On terrorism, the BNS borrows heavily from the UAPA.

Organised crime, in Clause 111(1), encompasses "any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, cyber-crimes having severe consequences, trafficking in people, drugs, illicit goods or services and weapons, human trafficking racket for prostitution or ransom. Sedition, which raised the freedom heckles from the civil society, has been replaced with treason. Some detractors of the retention of treason in the new code believe it to be a colonial hangover. The Supreme Court in May 2022 virtually stalled the operation of sedition law, deeming it "prima facie unconstitutional." The Government claims the new laws have "done away with sedition."

The BNS has, however, introduced the offence with a broader definition while incorporating the Supreme Court guidelines in the 1962 Kedarnath Singh case, which upheld the constitutional validity of the crime of sedition. In Hindi, the law carries out a simple name change—from rajdroh (rebellion against the king) to deshdroh (rebellion against the nation). The Central Government must be aware of the internal security challenges, extraneous factors, and different state and non-state actors fomenting fissiparous tendencies in our country. The jury is out to assess the Government's assurance about the judicious use of the new treason provisions.

The BNS has also consolidated previously scattered provisions about crimes against women and children in one chapter (Chapter V). New provisions have been added to strengthen women's rights. Section 69 BNS, for example, introduces a new offence not previously included in the IPC that penalises a man who engages in consensual sexual intercourse with a woman under four categories of deceit, including a false promise to marry.

In line with the Apex Court's decriminalisation of adultery in the landmark **Joseph Shine** judgment, **t**he BNS has removed adultery from the criminal code.

Several crimes and their perpetrators have been made gender-neutral. For instance, Section 77 BNS (previously Section 354C IPC), which addresses voyeurism, is now gender-neutral concerning the perpetrator—the term 'whoever' replaces 'any man' from the IPC. Similarly, Section 76 BNS (previously Section 354B IPC), which addresses assault with intent to disrobe a woman, now uses 'whoever' instead of 'any man,' allowing for the prosecution of women perpetrators. Additionally, the BNS has enhanced punishment terms for many offences protecting women.

One of the glaring omissions from the new laws is the issue of marital rape. The status of marital rape, as an exception to the offence of rape in the IPC, is still retained in the new BNS, despite several court rulings recognising marital rape as a ground for divorce. The issue is sub judice in the Apex Court. Section 67 BNS still requires the victim of a forceful sexual assault by a separated husband to report the matter herself and not by any friend or family member. The BNS keeps such a horrible offence as a bailable offence.

The BNS, with a seemingly progressive outlook, entirely leaves out Section 377 of the IPC, which criminalised "carnal intercourse against the order of nature". In 2018, the Apex Court read this provision down in its landmark Navtej Singh Johar v Union of India verdict, holding that it decriminalised consensual sex among adults, including those of the same sex.[3] The judgment created an exception in the case of consensual sex among same-sex individuals. However, with the exclusion of the entire Section 377 of the IPC provision in the BNS, and with rape laws still not made gender-neutral, there is little criminal recourse for male victims of such sexual assault, transgender people and the crimes of bestiality.

The BNS, under Section 103, for the first time, recognises murder on the grounds of race, caste, or community as a separate offence. The Supreme Court had, in 2018, directed the Centre to consider a separate law for lynching. The new provision should arrest the incidence of such crimes, which has shown an upward trend in recent years. The inclusion of offences for mob lynching is crucial and signals a legislative intent to curb such hate crimes.

These new laws aim to make the police investigation people-friendly with provisions like Zero FIR, online registration of police complaints, electronic summonses, and mandatory videography and forensic team visits to crime scenes for all heinous crimes. Electronic reporting of crimes is now a reality, eliminating the need to visit a police station physically and allowing for quicker action by the police. However, the complainant has to visit the police station within three days to sign the complaint physically. With the introduction of Zero

FIR, a First Information Report (FIR) can be filed at any police station, regardless of jurisdiction, ensuring immediate reporting of offences. Empowering citizens to report crimes via text message or electronic mode will help them navigate the legal process without fear of stigma or hesitation.

Zero FIR is not mentioned in any of the new laws. However, a Bureau of Police Research and Development (BPRD) SOP (Standard operating procedure) seeks to institutionalise the concept of Zero FIR. When a case is reported at a police station other than the police station where the actual crime was committed, a Zero FIR is supposed to be registered by adding a Zero before the FIR number and then transferred to the police station where the crime occurred. The SOP needs to be revised to enlighten the mode of transfer of the FIR to the other police station. Will it be sent online, by post, special messenger or another mode? Is there any app or platform developed to transmit such FIRs nationwide? What happens when the recipient police station finds the crime mentioned in the FIR did not occur in their jurisdiction? Will they register another Zero FIR or return the same? The document needs more details.

In a case of crime against the body, a medical examination in a government hospital is mandatory. Who will get this examination conducted before the evidence is lost or contaminated remains unanswered in the SOP. With time, the police will find answers, and the courts will give appropriate directions.

Section 173(3) BNSS provides discretion to a police officer in registering an FIR in a cognisable matter if the offence is punishable with three or more years but less than seven years of imprisonment. The officer in charge of a police station 'may' (and not 'shall') proceed with investigation or conducting preliminary enquiry with the approval of his deputy superintendent of police or do nothing. This enquiry is mandated to be completed within fifteen days. The Apex Court first permitted preliminary enquiry in the Lalita Kumari case. Some people familiar with the police functioning suspect this provision may be misused by unscrupulous investigating officers to extract bribes or favours from the complainant and the accused. For example, the offence of cruelty to married women is still punishable with a maximum of three years of imprisonment; in all such cases, the victim, a married woman, will have to wait till the police officer makes up his mind to take up the investigation.

There should be no scope for discretion at the police's end. Secondly, the law does not define the procedure for this preliminary enquiry. Will it be a cursory enquiry to ascertain the probability of commission of a cognisable offence, or will it be a full-fledged preliminary enquiry on the lines of the CBI's preliminary enquiry, often termed PE? No SOP has so far been issued either by the police think tank BPRD or any state government for the guidance of field-level police officers.

Section 46 BNSS explicitly allows the police to handcuff the accused during arrest or court production for offences like rape, acid attacks, human trafficking, and sexual crimes against children. In several cases, criminals have taken advantage of the non-handcuff provisions to escape from police custody. It is undoubtedly a welcome step.

In the event of an arrest, the arrested person

has the right to inform a person of their choice, ensuring immediate support. Arrest details will also be prominently displayed in police stations and district headquarters. The progress of the case will also be shared with the complainant from time to time.

Women, along with other vulnerable groups such as male children under 15, individuals over 60, and ill persons, etc., now need not go to the police stations to depose or record their statements in certain proceedings (proviso to Section 195(1) BNSS). Now, in rape cases, the proviso to Section 176(1) BNSS allows the police to record the statement of a rape victim through audio-video means, including mobile phones. A female police officer will record statements of rape victims in the presence of a guardian or relative, and medical reports must be completed within seven days.

The issue of enhanced police custody from 15 to 60 or 90 days (Section 187, BNSS) has invited sharp reactions. The proviso to Section 167(2)(a) of the repealed CrPC allowed a magistrate to extend custody beyond 15 days as long as it was not in police custody, meaning that beyond 15 days, the person had to go to judicial custody. However, the corresponding Section 187(3) of the BNSS has deleted the words "otherwise than in police custody" that exist in the CrPC, opening up the possibility of police custody for much longer duration than those envisaged in the UAPA [Unlawful Activities (Prevention) Act] or erstwhile stringent legislation like the POTA (Prevention of Terrorism Act) and TADA [Terrorist and Disruptive Activities (Prevention) Act].

However, the Union Home Minister clarified the new provision in a press conference. "I want to clarify that in BNS also, the remand period is 15 days. Earlier, if an accused was sent to police remand and got himself admitted to a hospital for 15 days, there was no interrogation as his remand period would expire. In BNS, there will be remand for a maximum of 15 days, but it can be taken in parts within an upper limit of 60 days,"[4] informed the Minister.

Forensic Push

The new laws make forensic investigation mandatory in offences punishable by seven years or more. The MHA aims to increase the conviction rate to 90 percent by involving forensic experts in spot visits and evidence collection, analysis, and presentation.

Section 176(3) of BNSS mandates compulsory inspection of heinous crime scenes by forensic experts, giving impetus to scientific investigation. In an adversarial judicial system, the judge relies on the parties to the present evidence. Properly collected, preserved, and tested forensic evidence from the scene of occurrence can help with inculpation and exculpation.

The new stipulation acutely burdens the existing forensic infrastructure regarding human resources and equipment. Only seven Central Forensic Science Laboratories (FSLs), 29 State FSLs, and over 50 Regional FSLs exist. Walking the talk, the Ministry of Home Affairs (MHA) had launched mobile forensic vans in Delhi to test the waters much before the passage of the laws. The results have been encouraging. Days after assuming office, the Modi 3.0 regime greenlit the MHA's ambitious proposal for the National Forensic Infrastructure Enhancement Scheme (NFIES) with an allocation of Rs 2254.43 crore

for the next five years. The scheme targets enhanced forensic human resources by establishing forensic science universities nationwide. This strategic move is designed to bolster capacity and efficiency in forensic examinations, mitigate the scarcity of trained human resources, alleviate backlogs, and align with the MHA's target of exceeding a 90% conviction rate.

Videography and photography of the crime scenes are also made mandatory. Crime scene photography is quite different from casual mobile photography. This is one area where the states and the Centre will have to pay immediate attention by providing hardware (mobiles with good camera resolution) and training to all investigators in a phased manner.

The National Informatics Centre (NIC) has developed apps for storing digital evidence, recordings, pictures, etc. Still, the SOP for collection, search and seizure, storage, chain of custody, authentication, transmission, analysis, and presentation is yet to be developed. In contrast, the USA's guidelines on the subject, issued in 2020 by the National Institute of Justice, US Department of Justice, clearly lays down the policies and procedures for digital evidence.

The whole judicial system is mired in humongous pendency. According to the National Judicial Data Grid, at the beginning of 2024, more than five crore cases were pending trial in various courts. The pileup has doubled in the last two decades. These cases include 169,000 cases pending for over 30 years in the district and high courts. According to a strategy paper by Niti Ayog 2018, it would take 324 years to clear this backlog at the current pace!

The pendency of court cases costs 1.5-2% of our GDP. The Rule of Law Index 2023, a country ranking published by the World Justice Project, ranked India 111th out of 142 countries in civil justice and 93rd in criminal justice.

In 1987, the Law Commission, in its 120th report on Manpower Planning in the Judiciary, recommended 50 judges per million population in a phased manner. Unfortunately, we have not yet reached the halfway mark of the desired level of judicial access. Fortunately, the government of India has pushed to reimagine substantive laws and widespread technology use and court processes in the new laws.

Section 183(6)(a) BNSS mandates that statements in certain sexual assault cases be recorded by a female judicial magistrate or, in her absence, by a male judicial magistrate in the presence of a woman. There was no such provision in the CrPC.

Another provision of Section 183(6)(a) BNSS requires a judicial magistrate to record a witness's statement in cases punishable by ten years or more, life imprisonment, or death, including certain offences against women. For maintenance cases, Section 145 BNSS (previously Section 125 CrPC) allows dependent parents, including mothers, to file for maintenance at their residence, removing the previous requirement to file only at the ward's residence.

Trial Stage Level

Section 21 BNSS (previously Section 26 CrPC) still provides that a woman judge shall preferably preside over court trials for certain women-sensitive offences. Also, the term 'some

adult male member' in Section 64 CrPC, relating to serving summons, has been replaced with 'some adult member' in its succeeding provision of Section 66 BNSS, recognising women as capable of receiving court-issued summons on someone's behalf. The BNSS also allows for the electronic setup of court proceedings, which makes it easier for the complainant and witnesses to depose without fear or favour.

Addressing the J20 Summit at Rio de Janerio on digital transformation and the use of technology to enhance judicial efficiency, the CJI claimed that "virtual hearings have democratised access to the Supreme Court." He announced that over 750,000 cases were heard over videoconferencing and more than 150,000 cases were filed online as technology has renegotiated the relationship between law and enforcement agencies, including the judiciary.[5]

It is heartening that the central government is providing liberal budgetary support to unite all criminal justice system stakeholders through seamless communication and data exchange. It has committed INR 7,000 crore to the Phase III eCourts Project, which will be implemented over the next four years.

The new laws aim for justice to be received up to the level of the Supreme Court within three years of the registration of the FIR. The BNSS stipulates that charges should be framed within 60 days of the first hearing. Only two adjournments are provided, eliminating the *'tarikh pe tarikh'* culture. Judgments in criminal cases are expected to be delivered within 45 days of trial completion.

The BNSS also permits trials in absentia of those criminals who have fled the country to evade prosecution. All the absconding proclaimed offenders can now be tried and awarded punishment in their absence. The CrPC only allowed the evidence to be recorded in the accused's absence. The new provision paves the way for faster extradition of the fugitives from their safe havens.

The Outreach

Coinciding with the rolling out of the three criminal laws on July 1, the officers-in-charge of all police stations and senior supervisory officers in the country organised public interactions to highlight the critical features of the intent behind the enactment of the Bhartiya Nyaya Samhita, Bhartiya Nagaril Suraksha Sanhita and the Bhartiya Sakshya Adhiniyam. The outreach involved women, youth, students, senior citizens, retired police professionals, eminent personalities, self-help groups, etc., to spread awareness about the key objectives behind the replacement of the British era IPC, CrPC and Evidence Act to put the "Citizens First, Dignity First and Justice First."

The new laws aim to enhance the use of technology in the investigation and trial of cases. Around two dozen modifications have been made in the Crime and Criminal Tracking Network and Systems(CCTNS) software to make it technologically compatible with the new laws and a host of mobile applications like National Crimes Record Bureau (NCRB) Sankalan, e-Sakshya (for electronically capturing evidence including forensics), Nyaya Shruti (for judicial hearings and onboarding of related documents) and e-Summons (for electronic delivery of court summonses) put in place to facilitate easy transition. The CCTNS

2.0 application e-connects police stations, forensics, prosecution, courts, and prisons.

Some critics have noted a need for more institutional preparedness before rolling out the new laws. Despite the general elections, the police leadership ensured that most of the investigating officers at the thana level had undergone refresher training, and handbooks were published for distribution among these personnel. This author spoke with several police chiefs, senior officers and ground-level officers who exuded confidence in rolling out the new laws without any hitch. Some, however, mentioned that some old police officers who were not comfortable with the digital upgrade of skills were mulling and seeking a posting in the non-investigative wings of the police.

Some find that over-reliance on deterrence, enhanced punishments, increased minimum sentences and fines, and death sentences do not go well with modern criminal jurisprudence. They are also quick to point out that the penalties prescribed are rehabilitative and restorative only in a few cases. For crimes like rape of a woman under 16 or 12 years of age (S. 65 BNS) or gang rape (S. 70 BNS), the fine may be reasonable. However, such penalties do not exist for many offences, such as rape or aggravated rape (S. 64 BNS) and sexual intercourse by a person in a position of authority (S. 68 BNS).

Community Service: A Hesitant Start

Among the fundamental positive changes in the new laws is introducing community service as an alternate punishment for some offences. Community service is essentially a work that the court may order, without any entitlement to any remuneration, that benefits the community. Though it is mentioned in the Statement of Objectives, BNS has introduced community service for just six offences, such as public servant unlawfully engaging in trade(S 202 BNS), misconduct in public by a drunken person (S 355 BNS), defamation (S 356(2) BNS), etc. Several other petty crimes, such as committing a public nuisance, stay outside the community service ambit.

Indian prisons are teeming with under-trial prisoners. Nearly three-fourths of prisoners are those awaiting trial. Community service as an alternate form of punishment keeps first-time offenders and minor felons out of prisons, affording an opportunity to reform. The new laws have yet to take this opportunity. Hopefully, with the positive outcomes of the new provisions, the Government will be encouraged to expand the scope of community service in the coming days.

The BNS, however, does not define community service, leaving it to the judges' discretion. Respective high courts and the Supreme Court can form a committee to devise a uniform award for community service.

Conclusion

There is broad consensus that the new laws are a step in the right direction. In the first 45 days of their enforcement, no criticism of the laws or inadequacies, particularly of the police, has been highlighted, which speaks volumes about the enhanced capabilities and efficient service delivery. No media, courts, critics or even the Parliament (which was in session) has discussed any systemic failures even in the initial days of implementation,

which is a tribute to all the stakeholders in the criminal justice system.

The 'Whole of Government' approach played a crucial role in rolling out these transformative and pro-victims new criminal laws through support and wholehearted involvement from various government departments. As far as laws are concerned, they will remain subject to interpretation and amendment to be more inclusive and comprehensive.

There is a definite need for evolving standard procedures to amplify the spirit of the new laws, leaving nothing to discretion.

The role of police leadership would be to ensure the correct and just use of the laws, limiting any abuse of authority and miscarriage of justice.

References:

1 *https://pib.gov.in/PressReleasePage.aspx?PRID=1852024*

2 *https://news.abplive.com/news/india/3-new-criminal-laws-bharatiya-nyaya-sanhita-bns-bnss-bsa-to-take-effect-monday-june-1-replacing-ipc-crpc-evidence-act-key-reforms-1699321*

3 *https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/*

4 *https://economictimes.indiatimes.com/news/india/police-remand-period-continues-to-be-15-days-under-bns-union-home-minister-amit-shah/articleshow/111407798.cms?from=mdr*

5 *https://lawbeat.in/top-stories/virtual-hearings-democratised-access-supreme-court-cji-chandrachud*

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Towards Equality- The Need for Gender Justice

Lalitha Kumaramangalam*

In the first eight months of 2024, the issue of women's equality has surfaced repeatedly, particularly at the national level. Some of the more prominent incidents include:

- A senior Member of Parliament, Ms Jaya Bachchan, protested against being referred to as Jaya Amitabh Bachchan by the Speaker of the Upper House. "Sir, only Jaya Bachchan would have sufficed," she said, stressing her concern with women being identified only by their husbands' names as if "they don't have their own identity."[1]
- The Justice Hema Committee's scathing report on sexual exploitation in the Malayalam film industry. Released on August 19, 2024, it presents a damning indictment of the pervasive and systemic sexual harassment afflicting female professionals within the Malayalam film industry.[2]
- The brutal rape and murder of a 31-year-old female postgraduate doctor in a state led by a woman Chief Minister. This case, when heard in the Apex Court, prompted the Chief Justice of India, Justice D.Y Chandrachud, to term the incident "horrific" and "horrendous".[3]
- The sexual assault of two young girls under the age of five in a village school in Badalpur, Maharashtra, has led to nationwide protests.[4]

These events have sparked widespread condemnation from the public, experts, administrators, and politicians, highlighting the unfortunate state of affairs regarding women's safety and equality in our country. Despite various initiatives, rape and sexual abuse continue to plague women and girls worldwide. Statistics show that Sweden, known for its development and progressive laws and attitude towards women, has the second-highest reported rate of rapes in the world. Therefore, the knee-jerk reaction of labelling India or Bharat as the "Rape Capital" of the world is both immature and unfair.

However, it cannot be ignored that even today, when we are the fifth-largest economy and the fastest-growing economy in the world, with both the largest and youngest population, women remain at risk for their safety in their homes, workplaces, and public spaces. Women also earn significantly less than men and work much harder, yet own less than 30% of agricultural land.

It is also true that, especially in the last decade, significant steps have been taken to introduce and strengthen laws to safeguard women and encourage their increased participation in economic activities. Initiatives such as the Jan-Dhan Scheme, the law banning Triple Talaq, the Prevention of Sexual Harassment at the Workplace Act, the law granting new mothers six months of maternity leave, and many other such measures have positively impacted women's lives across India.

Despite all these efforts, the on-ground situation shows that equality is still a distant dream for women in India. Socio-cultural factors like religion, customary practices, lower levels of education, limited access to finance, lack of skills

*Ms. Lalitha Kumaramangalam was Chairperson, National Commission for Women (NCW) from 2014 to 2017. She has extensive experience in working towards the empowerment and advancement of women from the vulnerable and underprivileged sections of society. She was also Director of India Foundation. Ms Kumaramangalam holds a Masters degree in Business Administration from the Madras University, and graduated with honours in Economics from St Stephen's College, Delhi.

training, poor access to the legal system, early marriage, and pervasive patriarchy prevent women from being given an equal chance. In the Global Gender Gap Report, India ranks 18th from the bottom; we are 17th from the bottom among the 153 countries included in the 2023 report.[5]

How do we change this situation? Clearly, more than just making laws is required. Creating supportive infrastructure helps but does not always ensure women can use such facilities equally. There are also significant differences among women themselves. It cannot be assumed that all women promote or practice gender equality. The State, meaning the Government, cannot achieve this alone. We, the people, must also play our part.

As stated earlier, India has the youngest population in the world, with a staggering 50% of its people below the age of 25, and 65% below the age of 35. According to World Bank data from 2022, 48.41% of India's population are women. These women represent both a significant challenge—if they are not given equal opportunities to participate—and a massive asset in helping India achieve its dream of becoming the third-largest economy in the world.

In India, women do an average of seven hours of unpaid domestic work daily, while men do less than three hours. It is acknowledged that women's unpaid care and domestic work enable men to "go out and earn." This also means that women who work outside the home often face a "double burden," managing household duties alongside their professional responsibilities. Despite this, women still lag far behind men in owning fixed assets like land and housing. It is well known that the peak years of productivity coincide with the prime years for childbearing.

Furthermore, women are generally paid less than men and often lack access to essential facilities like toilets and restrooms. Naturally, such factors restrict women's capacity to maximise their productivity. For example, over 70% of women in India work in agriculture and construction. How often do we see or hear of female agricultural labourers giving birth not in hospitals but at home to minimise days off? Similarly, it is common to see young children and even babies of female construction workers at construction sites.

Despite these challenges, there are many shining examples of Indian women who inspire generations to participate in nation-building. From Rani Ahilyabai Holkar to Rani Lakshmi of Jhansi, from Sarojini Naidu to Indira Gandhi, from PT Usha to Saina Nehwal, and many other notables, India has a history of women's leadership. And the spectacular growth of social media has provided vastly improved access to girls and women who aspire to greater equality.

We, however, must think outside the box.

For example, questions must be included in the next census to shed light on which sections of women need greater facilitation and access to empowerment, when these women need it, and what kind of support they require most.

India also needs urgent investment in early childhood care. Instead of providing doles to women who do not work outside their homes, it makes more sense to offer accessible and affordable childcare, even at subsidised rates if necessary. This approach will contribute significantly to the GDP. Similarly, the care of older people must also be addressed. The government should explore ways to support middle and lower-income groups in these two areas. Both are likely to yield substantial economic benefits, such as lower health expenses, increased productivity for women, and more employment opportunities for semi-skilled workers. The spin-offs are obvious.

One largely unexplored avenue to gender justice is sports. We already have several sportswomen who have brought laurels to our country and inspired millions of young, aspirational Indian girls. Sports are not just about winning medals; they foster discipline, greatly benefit physical and mental health, improve socialisation, strengthen self-respect, and present new economic opportunities. However, too few girls are provided the opportunity to participate in sports.

It would not be amiss to highlight Abhinav Bindra's unique effort to grow a sporting culture in India. Bindra is the first Indian to win a gold medal in an individual event at the Olympics. Unfortunately, the initiative by his foundation in Orissa and Assam is significantly underreported. In partnership with the Olympic Values Education Programme, this initiative aims to improve lives and build better communities by enabling over 15 million children (both boys and girls) in these two states to access sports. Sports can thus be a low-cost, inclusive driving force for progress and development. This example can easily be replicated nationwide and will significantly improve the lives of many youngsters, including girls.

India is known for its traditional, age-old knowledge of health, beauty, and textiles. An untapped treasure trove of such knowledge lies with our women and is still largely unexplored for its socio-economic potential. The moringa, neem, tulsi, turmeric, hibiscus, lotus, and a myriad of other trees, plants, and flowers are used to treat ailments ranging from indigestion to pimples, hair fall to burns, body aches, and the common cold. While some pharmaceutical companies have made millions by utilising these resources, many women could be encouraged to improve nutrition and health with local-level support. With targeted skilling, small-scale local initiatives with low investment can provide employment and income opportunities for women.

Unfortunately, the continuing lack of physical safety puts all initiatives and plans for the pursuit of socio-economic gender justice to nought. Women in India are still at risk, and this reality cannot be ignored anywhere in the country. Overt and covert intimidation, economic and social exclusion, and physical violence against women remain our most significant barriers to justice. A massive change in mindsets, more strictly enforced accountability systems at local, state, and national levels, urgent reforms in the judiciary and police, and addressing the increasing socio-cultural "Talibanisation" of women's lives need far greater attention than they currently receive—not just on paper or in theory, but in practice.

Otherwise, despite all our country's achievements, as long as our women and girls remain vulnerable to any form of violence, both as a country and a people, we will remain "In Churn."

References:

1 *https://www.ndtv.com/india-news/jaya-bachchan-again-objects-to-amitabh-in-her-name-6267867*
2 *https://www.newindianexpress.com/web-only/2024/Aug/23/hema-committee-report-this-is-not-cinema-but-shockingly-real*
3 *https://www.livemint.com/news/india/horrific-animal-like-instinct-sc-hauls-up-mamata-banerjees-bengal-govt-on-kolkata-rape-murder-horror-10-points-11724133234370.html*
4 *https://www.ndtv.com/india-news/massive-protests-after-2-nursery-girls-sexually-assaulted-in-thane-school-6378672*
5 *https://www.weforum.org/publications/global-gender-gap-report-2023/*

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FOCUS

Promoting Small Family Norms and Combatting Demographic Change for Poverty Alleviation and Social Cohesiveness

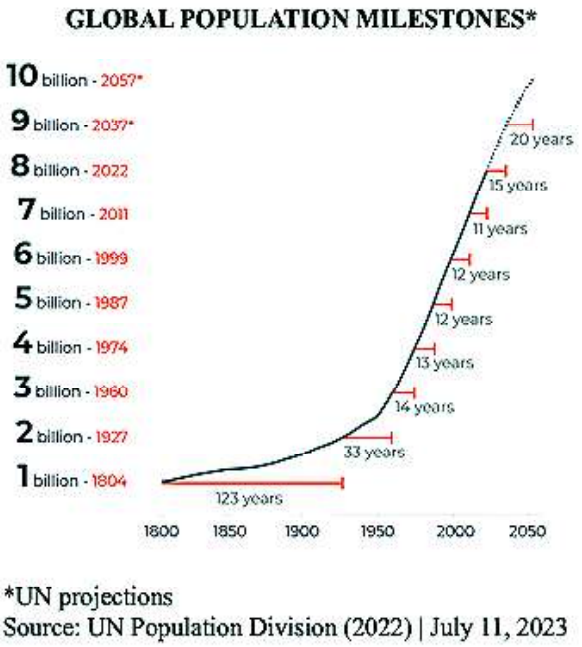
Dhruv C. Katoch*

Introduction

The United Nations designated July 11 as World Population Day to raise awareness of the urgency and importance of population issues worldwide. Today, there is greater awareness that unbridled population growth impacts the environment and human development. In an interconnected world with high aspirations, each nation strives to give its people a better quality of life and higher living standards. However, when confronted with the harsh realities of high population growth, achieving this goal is a delusion. The world's population is growing by 81 million annually, and we're on track to reach 10 billion by 2057.[1] This growth is not sustainable.

The last two centuries have seen phenomenal growth in the world's population. From one billion in 1804, it has grown to 8 billion in 2022. It is slated to touch 9 billion in 2037 and 10 billion in 2057. An analysis of world population data shows that advanced countries have slower population growth rates than poorer countries.

Since World War II, no country has gone from developing to developed status without first reducing its population growth rate. This enables greater investment in education, health, and development expenditures, leading to increased economic productivity, greater employment, and higher incomes.[2]

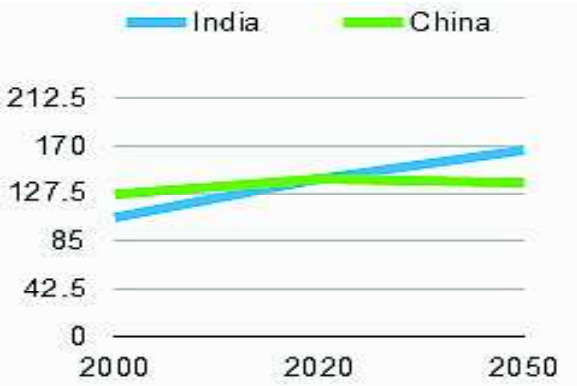


The India-China Equation

In April 2023, India achieved parity with China in its demography, with a population of 1,425 million. Soon after, it surpassed China to become the world's most populous country. In 1970, China's population stood at 823 million, while India's was 558 million. Both countries had nearly identical total fertility levels then, with just under six births per woman over a lifetime. Within a decade, China brought down its total fertility rate (TFR) to under three births per woman. In stark contrast, it took India an additional two and a half decades to achieve the same level of TFR. According to UN

*Maj. Gen. Dhruv C. Katoch is Editor, India Foundation Journal and Director, India Foundation.

projections, India's population will rise to 1.67 billion by 2050. Conversely, having achieved population stability, China will decline from its present level to 1.37 billion.[3] In percentage terms, India's population growth for 2024-2050 is projected at 17 percent, while China registers a negative growth of 3 percent. This works well to China's advantage and to India's detriment in becoming a developed nation by 2047.

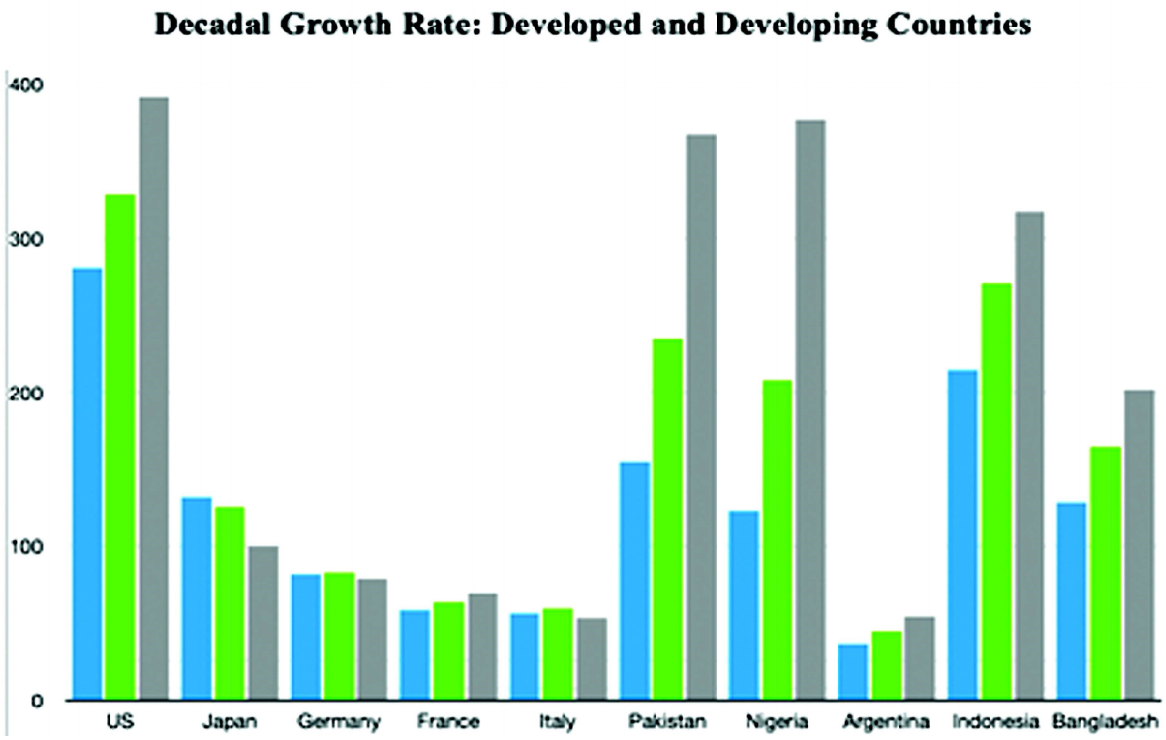


In 1970, both India and China were developing countries with low GDPs. China's was USD 92.6 billion, while India's was USD 62.4 billion. The per capita incomes of both countries were also almost the same, with India at USD 112 and China at USD 113. By 1980, India's per capita income was USD 266, and China was considerably behind at USD 194. Economic growth patterns altered significantly after 1980, with China achieving high growth rates as it modernised its economy and successfully implemented small family norms. By 2000, China's per capita income had shot up to USD 4,450 while India had a modest USD 1,357. Two decades later, in 2022, India's per capita income had marginally increased to USD 2,388, while China's per capita income jumped considerably to USD 12,720. As China achieved population stability, its per capita income rose sharply, indicating the positive linkage between low population growth and the economic well-being of a country.

If present population growth trends continue until 2050, India will have an additional 245 million people, while China, having achieved population stability, will have 55 million less from current levels. This impacts the availability of resources for their respective populations and the per capita income of their citizens.[4]

Developed Vs. Developing Countries

Let us compare the population growth rates of five developed and five developing countries for the first half of the twenty-first century (2000 CE to 2050 CE). Among the five developed countries chosen for comparison, the US has a decadal growth rate of 7.9% and France 3.7%. Japan shows a negative growth rate, while Germany and Italy have maintained their population levels and achieved population stability. All five are economically advanced countries and are part of the G7 grouping. The developing countries show a different set of statistics. Nigeria shows a whopping 41% decadal growth rate, with Pakistan at 27.4%. Indonesia and Argentina stand at 9.6%, whereas Bangladesh is at 11.3%.[5] (See Figure: Decadal Growth Rate: Developed and Developing Countries. Data for 2000, 2020 and 2050 for each country). Till 2050, improving the economic prospects of Bangladesh, Indonesia, and Argentina will be difficult, but their respective administrations can manage it as the growth rate has been partially contained. On the other hand, considering Pakistan's and Nigeria's high



population growth rates, it will be nearly impossible for both countries to achieve financial prosperity unless they drastically reduce their population. Both countries will face extremely challenging times ahead.

In 2023, the US (340 million), Indonesia (278 million), and Pakistan (240 million) were the third, fourth, and fifth largest countries by population, respectively. In 2050, the third, fourth, and fifth largest countries by population (projected) will be Nigeria (377 million), the US (375 million), and Pakistan (368 million). For the 27 years (2023-2050), Nigeria's population, which was 224 million in 2023, would have increased by 68% in 2050. The US population growth for this period is 10 percent, while that of Pakistan is very high at 53 percent.[6] The statistics concerning Bangladesh also make for an interesting analysis. When Bangladesh became independent in 1971 following the Liberation War, its population of 68 million was higher than that of West Pakistan, which had a population of 60 million. In 2023, the population of Bangladesh was 172 million, well below that of Pakistan (240 million). By 2050, Bangladesh will have a population of 203 million—an increase of 18 percent over the 2023 level. In terms of numbers, it will be a whopping 165 million below that of Pakistan.

Factors that contribute to the high population growth of some of the developing countries like Nigeria, Pakistan, and Bangladesh include religio-cultural beliefs, social taboos, poverty, female illiteracy, and lack of access to birth control and family planning services. All these will have to be tackled on a war footing. However, religious orthodoxy in some Muslim-dominated countries

will likely negate all attempts at promoting small family norms. India, with its sizeable Muslim population, will face similar challenges.

The Challenges for India

The growth of the population in India is uneven. Some states have achieved fair population stability, while others still have a long way to go. There is also a disparity in population growth within states, which has altered the demographic balance in many districts. This has political, social, and security challenges and impacts the concerned states' economic development. Another factor which adds to population growth in certain states is illegal immigration.

Demographic Changes in Assam

In Assam, demographic change has occurred due to the illegal migration of Muslims from Bangladesh as well as the higher population growth rate of the Muslim community. Assam has the highest percentage of Muslims in all the states of India. (It will be the second highest as and when statehood is restored to the Union Territory of Jammu and Kashmir).

On 17 July, Assam's Chief Minister Himanta Biswa Sarma expressed concern about the impact of the changing demography on his state. "It is a big issue for me," he said, adding, "In Assam, the Muslim population has reached 40% today. In 1951, it was 12%. We have lost many districts. This is not a political issue for me. It is a matter of life and death."[7] On 15 August, in his address after hoisting the national flag in Guwahati, he said the indigenous people of Assam were feeling threatened by demographic change as they have become a minority in 12 to 13 districts and that Assam's future was not secure.[8] This is not filibustering but is based on hard data.

Assam has experienced immigration since 1901, but since 1971, there has been large-scale illegal immigration into the state, mainly from Bangladesh.[9] The influx of immigrants has impacted the state's economy and caused adverse effects on the delicate ethnic balance within the population, leading to social and ethnic unrest. This has led to a decline in the availability of cultivable land per capita, which, for a state predominantly dependent on agriculture, leads to inefficiencies due to the small land holdings. In addition, encroachments on tribal and forest land have created social and ecological problems. Also, a burgeoning population in a situation of high unemployment and underemployment puts significant pressure on the labour market.

The state's population increased from 80.3

Year	Total Population	Muslim Population	Non-Muslim Population	Decadal growth Muslims	Decadal Growth Non-Muslims
1961	108.37	27.68	80.69	39.7%	33.4%
1971	146.25	36.73	109.52	32.69	35.72
1991	224.14	63.72	160.42	73.48 (Two decades)	46.47 (Two decades)
2001	266.55	82.00	184.55	28.68	15.01
2011	312.05	106.79	205.26	30.23	11.22
2021	367.36	139.07	228.29	30.23	11.22
2031 (Projected)	435.01	181.11	253.90	30.23	11.22
2041 (Projected)	525.46	235.86	282.38	30.23	11.22
2051 (Projected)	640.32	307.16	314.06	30.23	11.22

Data has been extrapolated from the Census of India for 1961-2011. The decadal growth rate has been assumed to be constant since 2011. A decline in this rate will impact different communities depending on the level of decline of the decadal rate.

lakh to 312.05 lakh from 1951 to 2001.[10] Besides concerns about illegal immigration into the state, fears have been expressed about the demographic changes taking place, especially in the border districts. The decadal growth of the Muslim population has been significantly higher than the rest of the Assamese population, averaging over 30 per cent since 1961. For the non-Muslim population, the decadal growth rate dropped from 35.72 per cent in 1971 to 15.01 per cent in 2001 and 11.22 per cent in 2011. If current population trends continue, Muslims will be the single largest religious group by 2050 in Assam. As of now, a worrying trend is that a large number of districts already have a Muslim majority. This is primarily caused by Bangladeshi immigrants, who are easily identifiable by their Urdu mixed Bengali accent. Districts like Gopalpura, Bongaigaon, Borpeta, Darang, Nagaon, Marigaon, Karimganj and Hailakand, which were Hindu-majority districts in 1971, had become Muslim-majority districts by 2011.[11] As of 2021, 11 of Assam's 32 districts were Muslim-majority.

Consequently, the indigenous people of Assam are being reduced to a minority in their state. The influx of minorities creates a crisis of identity, endangering the people's economic, political, and cultural lives. This has security implications, too, considering the narrow width of the Siliguri Corridor. The concerns expressed by Assam's Chief Minister are genuine and must be urgently addressed.

West Bengal

Like in Assam, there are serious concerns about demographic change in West Bengal. In 1971, Muslims constituted 12 percent of the state's population. Since then, the state's Muslim population has increased phenomenally, reaching above 30%. The excessive growth of the Muslim population is mainly due to two factors—the higher TFR of the Muslim community and illegal immigration from Bangladesh. In contrast, in neighbouring Bangladesh, the Hindu population, which was 30% in 1947, reduced to 8% in 2011.[12]

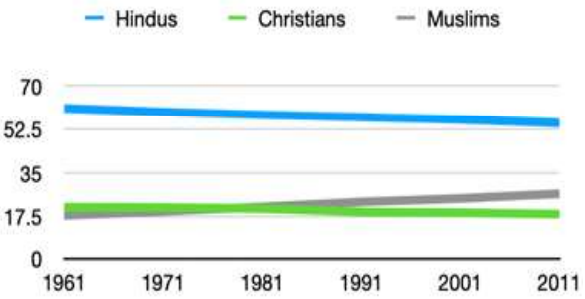
Infiltration from Bangladesh into West Bengal results from porous borders, as 11 of the 23 districts of the state border Bangladesh. These are South 24 Parganas, North 24 Parganas, Nadia, Murshidabad, Maldah, West Dinajpur (South), West Dinajpur (North), Darjeeling, Jalpaiguri and Kooch Behar. According to the 2011 census, three districts, Murshidabad, Malda, and Uttar Dinajpur, now have a majority Muslim population. In two districts, Birbhum and South 24 Parganas, the Muslim population is close to 40% and in seven districts, it is between 20% and 30%. This issue is of concern because illegal immigration has caused a change in demography in the districts near the Siliguri Corridor—a narrow stretch of land around the city of Siliguri. This corridor, also known as the Chicken's Neck, is just 20-22 km at its narrowest width and connects Northeast India to the rest of the country. Anti-national elements have threatened to sever this geo-political and geo-economical corridor from the rest of the country. For example, during the CAA protests, Sharjeel Imam, an activist and one of the faces behind the Shaheen Bagh protest, called for cutting off Assam and other states of Northeast India from the rest of India.[13] He was not the only voice in India threatening violence against the Indian state. Even

in Bangladesh, radical elements within that country have been asking for including Muslim-dominated border areas of India into Bangladesh.

The strategy for breaking India involves a five-step process. This consists of increasing numbers, grabbing territory, creating social terror, promoting separatism and then, finally, breaking away. Some districts in West Bengal are well into Stage 3 of this process. Sandeshkhali in North 24 Parganas is a prime example. At the turn of the century, many middle-class Hindus had left their villages, and only the poor Hindu Janjati community was left behind, which was reduced to a minority. The land was taken away using political identity as a tool. It was not just a case of social terror and sexual exploitation of women by people like Sheikh Shahjahan but involves extensive land grabbing too.[14] This process needs to be reversed.

Kerala

Kerala's success in adopting small family norms can be attributed to its matrilineal system, education spread, and improved health care. In addition, specific changes in political-economic policies and development strategies like investment in literacy, health infrastructure and family planning contributed to the state's changing demographics. As a result, the decadal growth rate, which was



26.29% in 1971, was reduced to 19.24% in 1981, 14.32% in 1991, 9.43% in 2001, and 4.86% in 2011.[15]

This has placed Kerala in league with countries like Germany, Japan, and France. It has also placed Kerala as the state with the highest percentage of people aged 60 years and above, which has increased from 5.1% to 16.5% over the last six decades.[16]

However, demographic change has not been uniform across different religious groups, as seen by the population growth by religion from 1961 to 2011. The Hindus, who comprised 60.9% of the population of Kerala in 1961, were down to 54.9%

Decadal Growth Rate by Religion

Decadal Growth Rate	Hindus	Christians	Muslims
2001-2011	2.3	1.6	12.98
1991-2001	7.51	7.7	13.7
1981-1991	12.55	7.1	25.05
1971-1981	16.83	16.4	30.2
1961-1971	23.17	25.7	37.5

in 2011. Similarly, the Christian population dropped to 18.4% in 2011 from 21.2% in 1961. However, the Muslim population increased from 17.9% in 1961 to 26.6% in 2011.[17]

The decadal population growth rate in the Hindu, Christian, and Muslim communities indicates that for 1961-2011, the Muslim decadal rate of growth has been over ten percentage points higher than that of the Hindus and Christians. (See Table: Decadal Growth Rate by Religion). In terms of numbers, the Muslim population increased by 193%

from 1961 to 2011. For the same period, the Hindu and Christian population increased only by 78.15% and 71.5 % respectively. By 2051, Muslims will comprise 34.6% of the population of Kerala. Hindus will be 49.3%, and the Christian population will likely be 16.1%.

One of the reasons for higher birth rates among Muslims in Kerala is early marriage. The number of females married before the legal age of marriage in Kerala in 2011 was 36.1% for Muslims, 12.8% for Hindus and 5.9% for Christians.[18] The spread of Islamic radicalisation in Kerala, along with the changing demographic pattern, does not bode well for the state and would require urgent corrective measures.

The Need for Reforms and Legislation

If India is to become a developed country by 2047, population control measures must complement the development effort. Ideally, the TFR in all states and communities must be brought down to below two, and the decadal population growth should be reduced to zero. Preferably, like China, it should be below zero for a few decades. This would necessitate specific measures to promote small family norms, especially amongst India's Muslim community.

Reforms within the Muslim community must preferably be self-driven, with the state acting as a facilitator. Organisations like Musawah, a worldwide Islamic feminist movement for equality and justice in the Muslim family and family laws, have been working on these issues since 2009[19] but have only had a limited impact. The state can support movements that seek gender justice and assist in initiatives that lead to reform of the Muslim Personal Law and give women equitable matrimonial property regimes.

To prevent child marriages, the Assam government, on 22 August, moved a bill in the Assembly to repeal the Assam Moslem Marriages and Divorce Act of 1935. Repealing this pre-independence Act was considered necessary as it had the scope of misuse by authorised licences (Muslim marriage registrars) as well as by citizens for underage/minor marriages and forcefully arranged marriages without the consent of the parties. A new bill was introduced—the "Assam Compulsory Registration of Muslim Marriage and Divorce Bill, 2024," which mandates Muslims to register marriages and divorces with the government and eliminates the role of the Qazi.[20] Such initiatives are needed across the country to eradicate child marriages.

The Maharashtra government's "Ladki Bahin Yojana," if implemented with a focus on small family norms, could potentially lead to many positive outcomes. The scheme is available to all women aged 23 to 65 whose annual family income is below Rs 2.5 lakh. It provides financial assistance of Rs 1500/ per month, three free LPG cylinders annually, and educational fee waivers for poor girls. By restricting such schemes to those with two or fewer children, the larger purpose of incentivising those following small family norms would be met, benefitting women and society in general. This could pave the way for a more sustainable and prosperous future with a smaller but more empowered population. The potential benefits of this policy are significant and should be a source of hope for our nation's future. In time, all welfare schemes, such as Pradhan Mantri Awas Yojana,

Nal Se Jal Yojana, PM-Krishi Samaan Yojana, etc, should be linked to incentivise those promoting small family norms.

Perhaps an additional scheme, besides the "Ladki Bahin Yojana," could be considered for girls in the 16-30-year-old age group. Here, financial incentives could be provided to unmarried girls in the 16-18-year group. Beyond 18 years to 30 years, the scheme could be linked to the spacing of children, with the scheme being withdrawn on the birth of a third child. In addition, a free college education could be provided to single-child families as an incentive for those who have sacrificed to bring up an only child.

Free rations for people below the poverty line could be restricted to two children to disincentivise those wanting more. Similarly, those with two or fewer children should be given preference in government jobs, as opposed to those with three or more children. In all elections, from the Panchayat level to the National Assembly, small family norms could be made mandatory for those who wish to contest.

Conclusion

India is on the cusp of a journey that can propel it to the status of a developed country by 2047. The challenges ahead for the people of India lie in multiple domains, one of which is the need to control population growth. The nation's ability to address this issue and achieve a near-zero decadal growth rate will determine whether it can achieve this goal.

References:

1 *https://www.aljazeera.com/news/2023/7/11/world-population-day-what-will-the-world-look-like-in-2050#:~:text=By%202050*

2 *https://www.populationmedia.org/the-latest/the-economic-benefits-of-family-planning-a-cost-benefit-analysis#:~:text=Smaller family sizes enable couples, greater employment, and higher incomes.*

3 *https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-no-153-india-overtakes-china-as-the-worlds-most-populous-country/*

4 *Ibid.*

5 *https://www.worldometers.info/world-population/#google_vignette*

6 *Ibid. Numbers in parentheses refer to the total population (in millions) on 1 July of the referenced year.*

7 *https://www.hindustantimes.com/india-news/himanta-biswa-sarma-claims-muslim-population-in-assam-now-40-matter-of-life-and-death-101721206395322.html*

8 *https://www.thehindu.com/news/national/assam/assam-threatened-by-demographic-change-says-himanta-biswa-sarma/article68528722.ece*

9 *Ihttps://www.researchgate.net/publication/228118982_Illegal_Migration_into_Assam_Magnitude_Causes_and_Economic_Consequences*

10 *Census of India, 2011.*

11 *https://www.jetir.org/papers/JETIR1906596.pdf*

12 *https://moderndiplomacy.eu/2021/06/06/the-unrecognized-demographic-situation-of-west-bengal-and-consequences-yet-to-occur/*

13 *https://www.indiatoday.in/india/story/agitate-and-cut-off-chicken-neck-corridor-to-isolate-assam-from-india-sharjeel-imam-1640117-2020-01-25*

14 *https://organiser.org/2024/02/19/222367/bharat/__trashed-6/*

15 *https://csesindia.org/wp-content/uploads/2022/02/WP-31-Demographic-Changes-in-Kerala-and-the-Emerging-Challenges-An-Assessment-compressed.pdf*

16 *https://www.aljazeera.com/gallery/2023/4/17/as-india-becomes-most-populous-an-ageing-trend-in-kerala*

17 *https://janasamkhya.net/online/1819/006.pdf*

18 *See Note 17.*

19 *https://www.musawah.org/wp-content/uploads/2018/11/WhoProvidesWhoCares_En.pdf*

20 *https://www.deccanherald.com/india/assam/assam-govt-tables-bill-to-abolish-1935-era-law-on-muslim-marriages-divorces-to-check-child-marriage-in-state-3160263.*

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Social Churning in Indian Society: An Interview with Prof Badri Narayan Tiwari*

Swadesh Singh*

Swadesh Singh:

Namaskar. Today, we will discuss the issues of social churning in our society. We have Professor Badri Narayan Ji with us, the Director of GB Pant Social Science Institute and a member of UGC and ICSSR. Professor Badri Narayan is a well-known scholar, intellectual, thinker, and author. He has especially written about marginalised society and has contributed in various ways to their empowerment. Welcome, Professor Badri Narayan Ji. Thank you for accepting our invitation. Let me begin by asking you about social churning, which we know is a continuous process that manifests in different ways. How do you see this social churning in our society on issues around caste census, reservation in the private sector, or reservations in the name of religion? So many things are going on in our society. Will this affect us negatively, or will something good emerge?

Badri Narayan:

First, I am very thankful to you and the India Foundation for inviting me to this discussion. You are right when you say that social churning is a continuous process. It is happening at two levels. At one level, it occurs within the society without any outside intervention. Within society means the nature of society is itself the society of churning. Any society can't exist, continue, or sustain itself without churning because fixity is an enemy of any society. Society needs a continuum of development, of change or what we call 'parivartan.' But you know, sometimes agencies from the outside intervene to support activists and speed up the process. They facilitate the process because they learn, equip themselves with various kinds of knowledge, skills, different types of thinking and ideas, and try to intervene in the process of social churning, thus making it faster. The direction may be positive or negative.

*__Prof. Badri Narayan Tiwari__ *is a Social Historian and Cultural Anthropologist and currently Director and Professor at the G.B. Pant Social Science Institute, Allahabad. His wide ranging interests cover culture, memory and politics, contemporary histories, Ethnography of marginalized politics, social and anthropological history, Dalit and subaltern issues and Identity formation and the question of power. He has been a fellow at the Indian Institute of Advanced Study, Shimla (1998-99), and Visiting Fellow at the International Institute of Asian Studies, University of Leiden, The Netherlands (2002) and HGIS Fellow at the Royal Tropical Institute, Amsterdam (2001). He was a recipient of the Fulbright Senior Fellowship (September 2005-April 2006) and the Smuts Fellowship, University of Cambridge (February 2007 – October 2007).*

*__Dr. Swadesh Singh__ *is an author, columnist, teacher and activist. He holds a PhD degree from Jawaharlal Nehru University, New Delhi and PG Diploma in Mass Communications from Indian Institute of Mass Communication (IIMC), New Delhi. He has 4 books to his credits - 'Modian Consensus, The Rediscovery of Bharat', 'Ayodhya Ram Mandir, Bharat's Quest for Ram-Rajya', 'Aatmanribharta: Revisiting the Idea and Practices', and 'Electoral Reforms: Ushering a Just Political Regime'. Dr. Swadesh Singh runs an academic forum named 'Academics For Nation'. He teaches Political Science at Satyawati College, University of Delhi.*

Swadesh Singh:

Politics is an excellent instrument for social transformation, and for that, we need politics of social justice. For the last 70-75 years, we have seen different manifestations of social justice politics. How do you see the future of social justice politics and the kind of debate and discussion around social justice?

Badri Narayan:

That is a very good question, Swadesh. You know, in society, society itself creates its methods to distribute social justice. Even in our medieval, pre-colonial, and even ancient societies, we had a system of distributing social justice. But it may be unequal. People may have complained. When you become aware, you develop and then say, "Oh! We are not getting this. We wanted to get this, but we couldn't get this." So now we are turning into a modern society. Everything is redefined in a contemporary manner. Modern requirements are influenced by modernity. So, in this modernity, new harmonics of social justice emerged with the discussions raised by Ambedkar, Jyotiba Phule, and various social reformers.

Social reformers are also part of society, but they have evolved as an agency that can facilitate the process of change. The politics of social justice came to India in two ways. One is from this kind of agency, and the other is from the state because the state is committed to their social development. British colonial discourses of social justice also sustained these structures. So, we have two kinds of structures of social justice in India, which are part of the Constitution. One is coming from the British legacy of the arguments. Another is by social reformers like Babasaheb Ambedkar. These social justice politics evolved through various kinds of reservations and democratic dissemination of resources. So, the politics of social justice is relevant to society; it's needed for society. But the politics of social justice is not fixed. It changes continuously. For example, social justice politics may benefit specific communities at specific times.

Swadesh Singh:

I understand there are two ways to ensure social justice, as you have also rightly mentioned in your book, 'The Making of the Dalit Public in North India'. One is through social reformers like Swami Achuthanandan and how the people from marginalised communities interacted with the British families they worked for. The other is through state intervention, as pushed and ensured by Dr Ambedkar. In the last 70-75 years, this social justice has been ensured for many people. Now, what do we do for those who are at the margins of marginal society? How do we ensure social justice for them? What is the way forward?

Badri Narayan:

I am going to address your question. The British legacy, which, when I say it, also includes the ideas of social justice coming from the West. We have imbibed those ideas with our freedom. Because freedom in India is a kind of hybrid thing, it's not fully Indian. Various types of ideology influenced it. So, when India became free, and the Constitution came with various factors such as positive discrimination, a community was already ready to benefit from that. That community was prepared because it had evolved with the British colonial Sahibs and British colonial class. They worked with them as subordinates and subaltern classes and were empowered. So, they became ready to take

benefit of all these reservations and protective discrimination. And then they got the benefit of that for 60-70 years.

In that process, what we call a group emerged. They are working as a capillary hole, and they are sucking most of the benefits of the reservation for themselves. They are not distributing to their community, and Babasaheb Ambedkar was also critical about that. He was very angry with the Dalit middle class because they were not paying back to their brothers. So, in Uttar Pradesh, you see, we have 66 Dalit communities; in Andhra Pradesh, 55 Dalit communities; and Maharashtra, more than 40 Dalit communities. But if you ask anyone how many Dalit communities you know in Uttar Pradesh, they may mention a few, and in Telangana, they may mention Mala, Madiga, Mahama, or Chamhar. They don't know much because these communities have not acquired visibility since you need education; you need political value, which comes through numbers.

You need your community leaders. You know your opinion-maker community; this community lacks those kinds of things. So, they need to catch up in taking the interest of the profit of the social justice. Social justice is an ethical domain, so a moral requirement of social justice should be met because they have yet to acquire the capability to compete with this. When one brother takes the benefits, we cannot leave the others behind. The state has a responsibility to distribute social justice to them and bring social justice to them. For that, what you can do is the kind of Supreme Court's recent verdict, which is a very transformative justice verdict. So, in my view, social justice opportunities may be distributed equally, but it is not possible that at one time you can distribute among all. So, you have to do it phase-wise.

Suppose that a few communities become developed, but others are left out. Then, you have to reach out to them. After the other 10, you have to reach another 10, then another ten because they have to acquire the capacity to take. Even if you take the reservation opportunity to them, they are not able to take that because they are not an educated class; they do not have a community that can aspire for that. So, you have to prepare them to take the benefit of this. It is a two-way process: take social justice opportunities to them and prepare them to take benefit. They are a vulnerable class, and you must be very protective of them. It's a very sensitive process. But here is what we will do: the community, which says it has a huge number, will leave this amount for us, and we will do it ourselves. They are getting all the benefits and are not sensitive towards their community brothers to whom this opportunity may be distributed.

Swadesh Singh:

Reservation is an instrument of social transformation. However, the argument from the dominant, marginalised communities is that though they are getting benefits of reservation in offices and academic institutions where they have entered, they still feel some untouchability. I agree with you that there should be social churning among marginal communities, but what is the way forward? Because there are arguments from dominant communities that they still face that kind of discrimination. So, where is the space to resolve this? That is a big question for the present and also for the future. Issues will continue to arise for reservations in the private sector, imposing a SC

creamy layer or increasing reservations by more than 50%.

Badri Narayan:

It would be best if you changed society to resolve the feeling of untouchability at various levels. You have to do a lot of social reform activities and give them dignity. Secondly, this community that feels untouchability, even though they are IAS or IPS officers—they will have to be adopted slowly. This entire discourse of modernity, because modernity in that way creates a condition in which you are progressing on that line, but you know, in that process, it's fine that we are worried about them. They should feel accommodated, not excluded. But they also have to think about others. And we also have to think about others, their brothers who are left behind. We are just thinking about visible people because they are coming and knocking on our door. Look, we are here.

Swadesh Singh:

You stated that social justice should be achieved at two levels: with the help of social reformers and through the state. We have seen that India has been a land of social reformers like Buddha, Ambedkar, Gandhi, and Hedgewar. We have seen these kinds of social reformers in society. But now, the whole responsibility is on the state only. Is that creating problems?

Badri Narayan:

Yes, that creates problems because we expect the state to do everything. The state will give reservation; the state will reduce untouchability; the state will reduce atrocities. But the state has its limitations. A state is not present everywhere. The state is present through policies but not through police or legal means. In that domain, society is more critical for affecting change as Babasaheb did in his own time, in politics and social politics. Social politics refers to the kind of social reform agencies, and also one way we have to involve social service agencies like RSS is by doing work. Like various kinds of other organisations, those who are strengthening society to resolve this kind of thing. There is another way that you turn entire politics into social politics, as PM Modi suggested many times, and that now, this politics is not only politics of the state. This politics is for social politics. So, we have to turn the politics in a social mode. This means you have to link social issues with politics as Gandhi did. Gandhi, in his national movement struggles, coopted themes on resolutions against untouchability, reduction of untouchability, and widow remarriage. He weaved various more significant social questions with his politics. So now we have to turn our politics towards Delhi, the throne of the power to society, where issues lie, and we have to link our politics through them. For example, we should review the work of Members of Parliament at the social level, whether the MP has tried to change society by organising discourses, meetings, etc, through various social agencies. The MP has to emerge as a social agency more than a political one.

Swadesh Singh:

There is so much expectation from the state, whether caste or any other identity like religion. We now see demands for religion-based reservations in many non-BJP-ruled states. This issue also came up during election time. How do you see religion-based reservations, and how would that impact us?

Badri Narayan:

The basis of reservation, as described in our Constitution, is inequality, suffering based on untouchability or caste, and historical deprivation. In that framework, religion has no base because every religion has an elite and a subaltern. So you cannot give reservations to the entire religion. You can provide reservations to the subaltern or those who are the deprived of that religion, and I think our Constitution is doing that because, in reservation patterns, there are castes from different religions also, and they get reservations.

So, I think if you distribute reservation through religion through various kinds of other primordial identities than caste, it will dilute the purpose of the reservation. Reservations are transitory and will not always continue. So, you have to resolve the issue on a case-to-case basis. First, you have to resolve the issue of deprivation caused by the caste system. When this is resolved, society will move towards an equal society. Then there will be no need for any reservation. Religion-based reservation may not be a good idea because it will dilute the mission of reservation in India.

Swadesh Singh:

Minority politics and minority appeasement politics have developed in the last 30-40 years. In response, the majority community has mobilised. How do you see the future of this majority-minority politics? In a secular modern state, should we have this kind of debate when we have so many other issues to deal with?

Badri Narayan:

See, today or tomorrow, we have to become a secular society, and to become a secular society, we need to eradicate all kinds of categories based on religion: majority religion, minority religion, majority public, and minority public. That will make us a secular society. To become an equal society, we must abolish all kinds of versus'—majority versus minority, this versus that and so on. On the one hand, we are aspiring to become equal. On the other hand, we are creating various kinds of versus'. So, we must come out from the multiple types of majority-minority versus' and different kinds of even caste versus', upper caste, and lower caste. We must come out from that as Babasaheb Ambedkar also aspired for that. The Buddha aspired for that. One day, we have to become the drop of the ocean. You are a drop, but you have to become the ocean. So that's the aim of the society. That's the goal of the society. We must move in that direction, not preserving versus', making it contesting and conflictual. One versus another, based on caste, religion, sub-religion, etc. I think this will fragment society.

Swadesh Singh:

Another identity where great social churning occurs is women, who also need transformation and empowerment. We have seen that we have moved from women's development to women empowerment to women-led development. The current government led by Prime Minister Modi has also done a lot for different sections of females, whether it's a girl child, an uneducated girl child living in the village, or any marginalised section of women residing in any slum or working-class women. The current government has also ensured reservations for women in Parliament. How do you see gender justice taking shape in the coming times?

Badri Narayan:

This is the age that PM Modi leads—the age

of aspiration. But this is also the age of 'Samahar'. So, in the age of development, this is the neoliberal age of development. In this phase, these various kinds of identity should ideally submerge in one. That's the aspiration. But identity never dies; it will be with us. It will dilute, again it will come, again it will die, again it will come. So, ups and downs will take place. So, women as a gender and as an identity is a good way of Indian governance, and they have given shares based on women as a category and caste as a category.

In the future, the way PM Modi has tried to nurture politics and women's reservations will produce many women leaders at the grassroots level, provide them with a share in the power, and strengthen them. But what is the strengthening of women for? It is not for making a society where we pit male versus female. It should be a 'Samahar' Samaj of the 'Samahar,' in that empowered women will live with the empowered male. Both have dignity, so the government is working towards women-led development and giving them a share, which will undoubtedly empower them. Now, you can see women everywhere; you can find women in any office. Earlier, 10 to 20 years ago, there were very few women in public spaces and offices. Now, we can find women everywhere. Slowly, this process is getting faster, and the government is taking it forward in the right way. But society has to think that it's not only the duty of a state to provide them with a share and dignity. So, we must make society aware of human dignity because even when the government is doing everything, we see what happened in Calcutta. It means society is not responding to the call the state is giving. So, we have to think about recorrecting our society, correcting our society.

Swadesh Singh:

Social churning occurs at the level of caste, religion and gender. In this background, how do you see the possibility of a common Civil Code in our country in a modern secular state? Can we continue to run the affairs of the state with different laws for different sections of society? How should we go forward in the direction of a Uniform Civil Code?

Badri Narayan:

If we are to have a secular society, we have to come out from religion-based specific legal procedures or legal provisions. We have to make a secular Civil Code which applies to all. In any society, we can give them positive discrimination at different levels, such as social and policy support. But for religion, as we are living in a secular society, we need a kind of uniformity. So, we must make a Uniform Civil Code, which PM Modi called a secular civil code. That is an excellent term; we should use it in our discourses. So, to make a secular society, we must have a Secular Civil Code. Without a Secular Civil Code, how can we have a secular society? Otherwise, we are dodging the people. On one hand, some people talk about having a secular society. On the other hand, they oppose the laws that can lead to society becoming secular.

Swadesh Singh:

Sir, you are a social scientist, author, columnist and public intellectual. But we also know that you are a great poet of our time, and recently, you have received an award from the Sahitya Akademi. Poets are generally very sensitive about their

surroundings; you are both a poet and a social scientist. How do you perceive the social churning or the social problems of our times as a poet, and how do you translate that into your social scientist thing?

Badri Narayan:

This question is very close to my heart, and you have raised it. I used to say that if I had not become a poet, it would have been impossible for me to become a social scientist like this. I am that social scientist because I see society as an emotion, an aspiration, a society of desires. Today, I talked with students in a workshop, and now we are talking about an aspirational society. However, 6-10 years ago, this term was not used in governance. Aspiration was not part of our discourse because social science, which comes from positivism, always tries to stop us from thinking in terms of aspiration, emotion, feelings, and all. Now, the government has also started thinking in that direction, and these devices, as a social scientist, I get from poetry because I used to write social science, the social science of emotion, the social science of aspiration, the social science of desires of the public. After all, social science is not only about understanding the structure of society but also about the feelings and emotions of society, and that is what I get from poetry. So, poetry has helped me become a different social scientist.

Swadesh Singh:

You have discussed the politics of aspiration and many other issues in detail. These will help us find a solution to our society's social churning and better understand the social problems of our time. Thank you very much, Badri Narayan Ji, for joining us in this conversation.

Badri Narayan:

Thank you, Swadesh, for this conversation. Thank you so much, and thank you, India Foundation, for providing me with this opportunity.

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Measuring Education Performance in India and Suggestions for Improvement

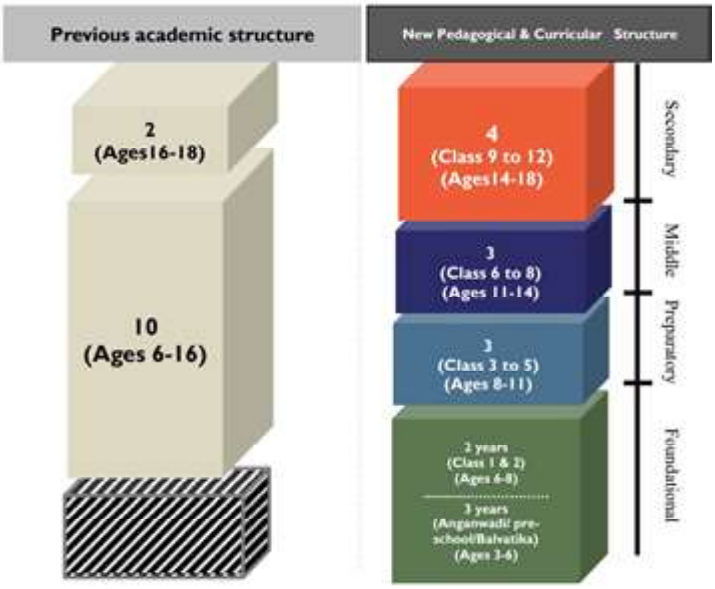
Aaditya Tiwari*

The challenges of the Indian Education system are varied. On the one hand, there is a need for quality teachers, improved infrastructure, appropriate curriculum, and efficient governance structures. Conversely, an assortment of actors is also supposed to make sense of this mesh. Mudaliar Commission[1] was established in 1952 regarding secondary education and suggested diversifying the school curriculum, making vocational education part of the course. Kothari Commission[2], or the National Education Commission in 1966, was the first policy initiative by the Government of India to streamline school education in the country. An important recommendation was to standardise the education system into the 10+2+3 format in India. Education became part of the concurrent list from the state list under the Forty Second Amendment Act, 1976, brought in during the emergency[3]. National Policy of Education (NPE) was brought under the Rajiv Gandhi Administration in 1986 (later modified in 1992).[4] It launched 'Operation Blackboard' to improve the primary education status across the country. *Sarva Shiksha Abhiyan* under the Atal Bihari Vajpayee government made universalising primary education a mission, and the Right to Education was made into a fundamental right. National Education Policy (NEP) 2020[5] is the latest policy intervention brought by the Narendra Modi government after a gap of almost three decades. The Union Cabinet adopted the National Education Policy 2020 on July 29, 2021. The focus of NEP 2020 is different from previous policies in that it puts a lot of weight on the quality of education.

The vision of the policy aspires to 'provide high-quality education to all and thereby make India a global knowledge superpower'[6]. Some of the commitments in the policy include:[7]

1. Changing the school structure from the current 10+2 to 5+3+3+4 model to make learning more holistic.
2. Focus on Early Childhood Care and Education (ECCE).
3. Achieve the goal of universal foundational literacy and numeracy in primary schools by 2025.
4. Expose at least half the school and higher education students to vocational training by 2025.
5. Adopt innovative mechanisms to group or rationalise schools by 2025.
6. Ensure all students are school-ready when they enter school in first grade by 2030.
7. Prioritise bringing out-of-school children back into the educational fold. Aim to stop further drop out from schools and achieve 100% enrolment from preschool to grade 12 by 2030.

*Aaditya Tiwari is a governance and sustainable development professional who graduated from SIPA, Columbia University. He has a decade of experience in India's development sector, including roles at think tanks, political administration, and the UN.



(Source: NEP 2020)

8. Making teacher education multidisciplinary by 2030.

These commitments are ambitious and an uphill task given the current state of schools in India[8]. 1.5 million schools, 265.2 million children, and 9.5 million teachers[9] are at stake, and the economic cost of failing this demographic will be enormous.

Peter Drucker is attributed to the quote, 'What can't be measured, can't be improved.' India doesn't have the challenge of measurement per se, but it is ineffective at using the data collected for improvement. Some multiple datasets and indexes fail to guide policymakers in making informed choices—for instance, the challenge of zero-enrolment schools. Several state governments like West Bengal[10] and Arunachal Pradesh[11] have shut down zero-enrolment schools, which were opened to comply with the Right to Education policy but hadn't seen any admission for a long time. It is also important to define objectives towards which performance is being measured. Currently, whatever measure happens is used to rank states and districts, and the expectation is that a sense of competition will motivate lagging regions to perform better. Ideally, this exercise should be able to define factors causing a particular set of schools to outperform other schools in the same area.

This essay examines methods currently used to generate data and measure performance in India and explores the feasibility of employing sixteen equity indicators12 prepared by the National Academy of Sciences, Engineering, and Medicine in the United States.

Existing performance measuring mechanisms:

Unified District Information System For Education Plus (UDISE+)[13]

The District Information System for Education (DISE) was piloted in 1995 to measure and monitor the implementation of the government scheme for

primary grades. A similar management system, SEMIS, was launched for grades 9-12 in 2008-09. A 'Unified District Information System for Education' (UDISE) was prepared by integrating DISE and SEMIS in 2012-13. An updated version of UDISE called UDISE+ was introduced in 2018-19 with improved mapping, capture and verification of data.

UDISE+ isn't an index but an elaborate collection of data on school management, student enrolment in different categories, the number of teachers, etc. It also measures data on various infrastructure developments, such as toilets for girls and boys, libraries, computer labs, the Internet, etc. UDISE+ then presents specific findings that are basic representations of cumulative data without analysis.

National Achievement Survey (NAS)[14]

NAS is a national-level survey that identifies learning level outcomes for students in classes three, five, eight, and ten. The purpose of the survey is to identify continuous learning and skill gaps. The first NAS survey was conducted in 2017; the latest was in 2021. It measured students in classes three and five on language, math, and environmental science; class eight kids on language, math, science, and social science; and class ten students on language, math, science, social science, and English.

Performance Grading Index (PGI)[15]

Introduced in 2017-18, PGI was developed to provide insights into the status of school education across India. PGI collects data from the Department of School Education and Literacy, MoE and the following sources:

a. Unified District Information System for Education (UDISE+)
b. National Achievement Survey (NAS) of NCERT
c. Mid-Day Meal website (MDM portal)
d. Public Financial Management System (PFMS)
e. Shagun PortalEL (This portal was launched in 2019 to integrate .23 million education websites across India.)

Methodology

PGI measures seventy indicators under two main categories: outcomes and governance & management. Under the outcomes category, there are four domains:

Categories	Domain	Indicators	Sub Indicators	Total Weight
1. Outcomes	Learning Outcomes (LO)	9	0	180
	Access (A)	8	0	80
	Infrastructure & Facilities (IF)	11	2	150
	Equity (E)	16	18	230
2.Governance Management(GM)	Governance Process (GP)	26	6	360
Total	**5**	**70**	**26**	**1000**

(Source: PGI 2020-21 Report)

1. Learning Outcomes And Quality (measures nine indicators obtained from Shagun and NAS)
2. Access (measures eight indicators obtained from UDISE+ and Shagun)
3. Infrastructure & Facilities (measures 11 indicators obtained from UDISE+, Shagun and MDM portal)
4. Equity (measures 16 indicators obtained from NAS, UDISE+ and Shagun)

The governance and Management category measures one domain: governance processes (it measures 26 indicators obtained from UDISE+ and Shagun).

School Education Quality Index (SEQI)[16]

NITI Aayog developed the School Education Quality Index (SEQI) to evaluate the performance of schools in states and UTs. The index focuses on outcomes, strengths, and weaknesses and helps with policy interventions. The first report was launched in 2019.

SEQI measures two categories under outcomes and governance processes. Outcomes are further divided into four domains.

Category 1: Outcomes

- Domain 1: Learning Outcomes
- Domain 2: Access Outcomes
- Domain 3: Infrastructure & Facilities for Outcomes
- Domain 4: Equity Outcomes

Category 2: Governance Processes Aiding Outcomes

Challenges with Current Measurements:

1. The Performance Grading Index is a very elaborate exercise, given its reliance on 70 varied indicators that source information from multiple portals. The data used by PGI is challenging to access, and the platform for interacting with the index isn't very user-friendly.
2. The National Achievement Survey interface is interactive but has too many data points in one window. Also, the averages are compared among districts and states; there

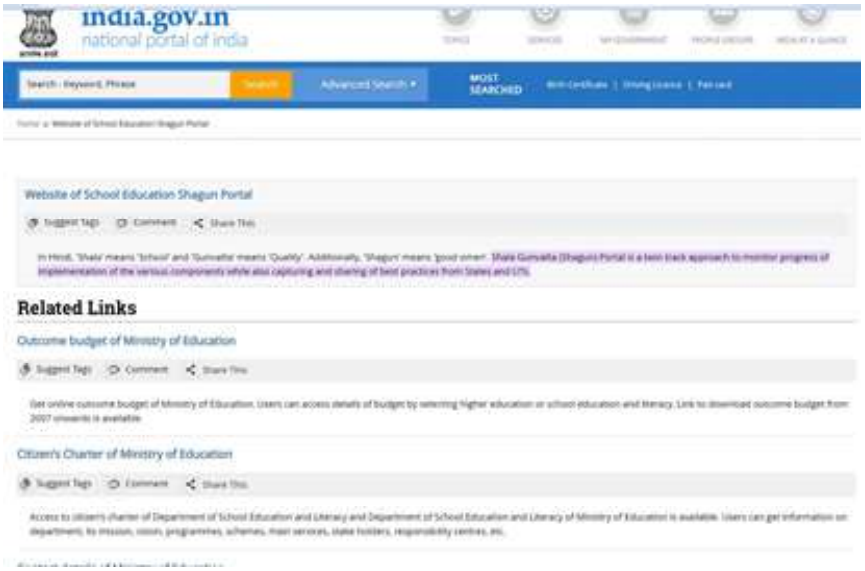
Table 1: Summary of Index Categories and Domains

Category	Domain	Number of indicators	Total weight
1. Outcomes	1.1 Learning Outcomes	3	360
	1.2 Access Outcomes	3	100
	1.3 Infrastructure & Facilities for Outcomes	3	25
	1.4 Equity Outcomes	7	200
2. Governance Processes Aiding Outcomes	Covering student and teacher attendance, teacher availability, administrative adequacy, training, accountability and transparency	14	280
Total		**30**	**965**

(Source: School Education Quality Index, 2019)

can be a more efficient way to compare data instead of averages, which hides information on inequality.

3. The National Achievement Survey isn't an annual feature. The first survey was in 2017, and the second was in 2021. To see year-on-year growth, this survey has to be a yearly feature. No other national survey happens at such a scale.
4. The National Achievement Survey should be used to identify skill gaps in language, math, and science, which will help policymakers plan and allocate resources more efficiently.
5. The equity indicators under the PGI and NAS measure the difference in math and language performance between scheduled caste and general category students, rural and urban students & minorities and general category students. Some indicators measure infrastructure facilities for children with special needs and boy and girl toilets. However, more than these data points are needed to understand or measure performance and learning outcomes gaps.
6. UDISE+ data is elaborate regarding physical and social infrastructure, but the interface needs to become more user-friendly, allowing comparisons across years. It also needs to depict the growth trajectory of the factors it measures.
7. Data on Midday Meals isn't centrally available. Different states provide this information differently without a uniform format.
8. Shagun Portal needs to be reworked entirely as the interface could be better.
9. The School Education Quality Index hasn't been published since 2019. Data management methods need to be overhauled and made more scientific. In 2016, a group of scientists and organisations published an article in Scientific Data that presented guiding principles on scientific data



management. These are called the FAIR principle, which means data should be Findable, Accessible, Interoperable, and Reusable[17].

Building Equity Indicators for India

The National Academy of Sciences, Engineering and Medicine, US, set up a committee which came out with a report in 2019 titled 'Monitoring Educational Equity'[18]. The report identifies 16 key indicators that may affect students' education, such as 'differences in the conditions and structures in the education system'. These indicators have been chosen to highlight gaps and their potential causes and look for interventions to fill them. The report proposes to measure inequities under two categories:

A. 'Disparities in Outcomes': to assess disparity in academic performance

B. 'Equitable Access to Resource and Opportunities'

The attributes of such indicators, as per the report, are:

1. Able to measure academic outcomes over time.
2. Bring out disparity among subgroups within populations.
3. Indicators should be helpful across different geographies and at different times.
4. Grade level appropriateness.
5. Factor in a context that impacts education.
6. Frequently produce an easy-to-understand summary of statistics.
7. Use scientifically sound methods.
8. Include continuous inputs from relevant research or other developments.

Disparities in Outcomes

Domain A: Kindergarten Readiness

Various studies in neuroscience suggest that around 85% of a child's brain development happens by the age of 6[19]. The early years of education are critical in a child's overall development. Proper interventions at this stage can help bridge gaps among children from disadvantaged backgrounds. The report suggests measuring disparity in two skills under this domain.

1. Indicator 1: Disparity in Reading and Numeracy skills
2. Indicator 2: Disparity in Self-regulation and Attention skills

Reading and numeracy skills can be measured using the National Achievement Survey. While the National Curriculum Framework, 2005[20] focuses on skills like discipline, attention, etc., they must be incorporated into early childhood educators' training.

Domain B: K–12 Learning and Engagement

Attendance and performance in school tests are directly and positively relevant to learning and attainment. Measuring group differences can help narrow down the gaps.

3. Indicator 3: Disparity in attendance
4. Indicator 4: Disparity in overall performance and being on track to finishing schools
5. Indicator 5: Disparity in reading, math and science scores.

Shagun portal provides attendance data and indicators the National Achievement Survey can cover 4 & 5.

Domain C: Educational Attainment

Education is a means to better opportunities

and an improved lifestyle. Ideally, education in schools should be able to prepare students for college and financial opportunities.

6. Indicator 6: Disparity in graduating on time
7. Indicator 7: Disparity in readiness for after-school opportunities like college, employment opportunities, or armed forces.

Annual board results will be used to identify gaps in on-time graduation. Currently, there is no mechanism to capture post-secondary education avenues for children.

Equitable Access to Resources and Opportunities

Domain D: Extent of Racial, Ethnic, and Economic Segregation

A child's exposure depends on the peers they study along and grow with. Schools in low-income areas or with most students from low-income or disadvantaged groups tend to perform poorly, leading to poor opportunities later.

8. Indicator 8: Disparity in the concentration of poverty or the presence of diverse groups of students in the school.

The UDISE + surveys can capture this data. Section 12 1(c) of the Right to Education[21] promises admission to up to twenty-five percent of the maximum capacity of seats in class 1 to economically weaker and disadvantaged children. It provides them with free and compulsory education until school completion. Effective implementation of this section will increase the diversity within schools.

Domain E: Equitable Access to High-Quality Early Learning Programs

Pre-elementary schools play a vital role in kindergarten readiness and the child's overall development. Geography, economic conditions, and family background influence access to pre-elementary education. Access to high-quality early learning programs can lead a child to different life paths.

9. Indicator 9: Disparities in access to and participation in high-quality pre-elementary programs.

The National Education Policy has focused on early childhood education and care (ECCE). It suggests delivering high-quality pre-elementary education by building well-ventilated, well-designed, child-friendly, and well-constructed infrastructure. Also, ECCE centres should be co-located with Anganwadi (rural childhood care centre) or existing primary schools wherever possible. This can be incorporated and measured through the UDISE+.

Domain F: Equitable Access to High-Quality Curricula and Instruction

Access to a rigorous curriculum and quality teachers play a critical role in a child's learning process. Exposure to a diverse curriculum, including science, geography, economics, technology, laboratories, languages, art, and history, makes students well-rounded. A single teacher can inspire an entire classroom, but there needs to be conclusive evidence on what teacher traits contribute to student achievement and outcomes. Experienced and more qualified teachers should be distributed equitably rather than in a concentrated manner.

10. Indicator 10: Disparities in access to experienced and qualified teachers in diverse subjects.

11. Indicator 11: Disparities in access to and enrolment in rigorous coursework like programs and international baccalaureate.
12. Indicator 12: Disparities in curricular breadth with absence in availability of subjects like economics, geography, etc.
13. Indicator 13: Disparities in access to high-quality academic support like tutoring.

Indicators 10, 12, and 13 can be easily measured using the UDISE+ and database. For Indicator 11, state governments or CBSE can take the initiative to adapt to rigorous curricula phase by phase.

Domain G: Equitable Access to Supportive School and Classroom Environments

Physical and emotionally safe environments address a child's socio-emotional and academic requirements. While there is a focus on building safer infrastructure, more emphasis has to be placed on supportive environments by providing access to counselling staff, social services, etc.

14. Indicator 14: Disparities in school climate regarding perception of safety, support, trust, etc.
15. Indicator 15: Disparities in non-exclusionary discipline practices like suspensions and expulsions
16. Indicator 16: Disparities in non-academic support for student success

Indicator 14 can be measured by adding it to the National Achievement Survey. It can also be measured by involving school management committees. Indicator 16 can be measured through the UDISE+. However, the available data sources have no mechanism to measure indicator 15.

Conclusion

National Education Policy 2020 talks of Socio-Economically Disadvantaged Groups (SEDGs) like the scheduled castes, tribes, minorities, children with special needs and women as underrepresented, cutting across all inequities. It mentions the disparity due to lack of access, quality of good schools, teachers and poor infrastructure. As the Indian economy grows, these disparities have to be reduced. The current education system will provide the bedrock that India requires for the skilled workforce; if attention is not paid to building an equitable landscape, India might face unintended consequences. Hence, it must improve performance measurement in school education and build indicators enabling policymakers to make informed decisions.

References:

1. *"75th Independence day, education policies in India, New education policy, NEP, education post independence education news | Education News." India TV News. Accessed December 16, 2022. https://www.indiatvnews.com/education/news-75th-independence-day-nep-2020-and-other-major-education-policies-post-independence-726285.*
2. *"National Policy on Education 1968." n.d. Government of India, Ministry of Education. Accessed December 16, 2022. https://www.education.gov.in/sites/upload_files/mhrd/files/document-reports/NPE-1968.pdf.*
3. *The Hindu. 2022. "Transfer of 'education' to concurrent list during the Emergency has upset India's federal structure, T.N. govt tells HC." October 17, 2022. https://www.thehindu.com/news/national/tamil-nadu/*

transfer-of-education-to-concurrent-list-during-the-emergency-has-upset-indias-federal-structure-tn-govt-tells-hc/article66022410.ece.

4. *"npe86-mod92.pdf." n.d. Ministry of Human Resource Development. Accessed December 16, 2022. http://www.education.nic.in/policy/npe86-mod92.pdf.*
5. *"National Education Policy 2020." n.d. Ministry of Education. Accessed December 12, 2022. https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf.*
6. *Ibid.*
7. *Ibid.*
8. *"ASER 2021." n.d. ASER Centre. Accessed December 12, 2022. http://www.asercentre.org/Keywords/p/394.html.*
9. *n.d. UDISE+ Dashboard. Accessed December 12, 2022. https://dashboard.udiseplus.gov.in/#/home.*
10. *EducationWorld. 2021. "West Bengal shuts schools with zero enrolment." December 8, 2021. https://www.educationworld.in/west-bengal-shuts-schools-with-zero-enrolment/.*
11. *The Indian Express. 2020. "Arunachal govt to close down zero enrolment schools: Education Minister." March 2, 2020. https://indianexpress.com/article/education/arunachal-govt-to-close-down-zero-enrolment-schools-education-minister-6295945/.*
12. *National Academies of Sciences, Engineering, and Medicine. 2019. Monitoring Educational Equity. Washington, DC: The National Academies Press. https://doi.org/10.17226/25389.*
13. *n.d. UDISE+. Accessed December 16, 2022. https://udiseplus.gov.in/#/page/publications.*
14. *2022. NAS Gov. https://nas.gov.in/.*
15. *n.d. Performance Grading Index (PGI). Accessed December 16, 2022. https://pgi.udiseplus.gov.in/#/home.*
16. *Ahmad, Junaid K., and Cristian Aedo. n.d. "Untitled." | NITI Aayog. Accessed December 16, 2022. https://www.niti.gov.in/sites/default/files/2019-09/seqi_document_0.pdf.*
17. *"What are the FAIR Data Principles? | Augustus C. Long Health Sciences Library." 2022. Augustus C. Long Health Sciences Library. https://library.cumc.columbia.edu/insight/what-are-fair-data-principles.*
18. *National Academies of Sciences, Engineering, and Medicine. 2019. Monitoring Educational Equity. Washington, DC: The National Academies Press. https://doi.org/10.17226/25389.*
19. *The Hindu. 2019. "Focussing on the critical years of a child's life." July 31, 2019. https://www.thehindu.com/opinion/op-ed/focussing-on-the-critical-years-of-a-childs-life/article28762478.ece.*
20. *"NATIONAL CURRICULUM FRAMEWORK." 2005. NCERT. https://ncert.nic.in/pdf/nc-framework/nf2005-english.pdf.*
21. *"Right to Education | Ministry of Education, GoI." n.d. School Education. Accessed December 16, 2022. https://dsel.education.gov.in/rte.*

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