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FOR 
CIVIL LIBERTIES

Dismantling rights through 
systematic policy dilutions-

A PUCL Maharashtra report

Tracking legislative changes 
in India: 2014 - 2019

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April 2019
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Mihir Desai
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For PUCL Maharashtra
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INTRODUCTION

Human rights are sought to be guaranteed in India through a combination of the safeguards enshrined in the Constitution of India and several laws, protected by a complex machinery of Courts, Tribunals and Commissions and aided by an alert and vibrant civil society committed to working on human rights issues. It is this combination that empowers human rights organizations to use the law to prevent and protect against human rights abuses.

The abuses are many. Human rights violations have spiraled in the recent past - whether socio, economic and cultural rights or civil and political rights. As of 2016 in India, 44 per cent children below the age of five years are malnourished; 72 per cent infants have anemia; 33.6 per cent women are undernourished and 55 per cent women are anemic.

Annually, thousands of farmers commit suicide in India. Youth are either unemployed or underpaid and working for the unorganized sector, beyond the pale of effective protection of labor laws. There are approximately 4.5 lakhs of people in prisons in India, of which 53 per cent are Dalits, tribals and Muslims. At least 67 per cent of these prisoners are undertrials and an overwhelming 70 percent convicts are either illiterate or have studied only up to the 10th standard. This, even as the autonomy of higher education is being speedily eroded.

India's ranking has fallen 36 points in just 2 years to the fourth last position globally in the Environmental Performance Index 2018, at 177/180. Meanwhile, India has jumped up 30 spots in the World Bank formulated ranking released on October 31, 2017 in the list of countries assessed according to their ease of doing business, a feat attributed mainly to the changes in country's regulatory laws, approval process, difficulty in starting business.

CHANGING SCENARIO

Since May 2014, the already grim state of human rights in India began to take a turn for the worse. The advent of the NDA government has also borne witness to large-scale changes in Indian polity and society. While campaigns like ghar wapsi, love jihad and the lynching of Dalits and Muslims in the name of cow protection have unleashed violence with impunity on the one hand, on the other hand the government has seen to it that Hindutva terror accused are not only let off but celebrated and fielded as candidates in the upcoming elections.

Millions of the poor have been displaced due to big government or corporate infrastructure and mining projects and have not been rehabilitated. More than two million tribals and forest dwellers were under threat of being evicted due to a recent
ruling of the Supreme Court, aided by complicit state governments, till a case challenging the evictions secured a stay.

The incidence of sexual violence is rising alarmingly. Women, dalits, adivasis, farmers and Muslims are feeling increasingly marginalized while the abuse and discrimination against members of religious minorities and dalits continues unabated.

On the one hand, hate mongers who are either members of the ruling party or who get tacit support from it, are permitted to spit venom without any accountability. On the other, efforts around the country to demand civil and political freedoms is either censored, snuffed out or met with swift retribution.

We are witnessing a frontal attack on the autonomy and independence of institutions. There has been a deeply disturbing trend of increasing executive interference on all fronts, whether directly or indirectly. The removal of RBI governors who fail to toe the line with the ruling party, the change in the administration of centralized tribunals, the non-appointment of important members on commissions, the abolition of the Planning Commission and the setting up of the Niti Ayog and the refusal to appoint a leader of opposition in the Parliament, are just some examples before us.

Institutions and constitutionally-mandated bodies are under attack. The Election Commission’s independence is under a cloud, while the Central Bureau of Investigation (CBI) has been actively sabotaging cases against ruling party functionaries and sympathisers.

Amendments introduced through the Finance Act, 2017 have had a fatal impact on the independence of tribunals, through centralization of appointments, changes in conditions of service, qualifications and increasing executive interference. These amendments not only drastically reduced the number of tribunals, but altogether overhauled the procedures provided in different statutes and vested in the Central Government absolute power to make rules to effectively govern operation of the tribunals.

Several of the institutions, like zonal benches of the National Green Tribunal (NGT), State Human Rights Commissions (SHRCs), Information Commissions etc. have been rendered in-operational due to the non-appointment of members. A prime reason for the non-appointment of members to these institutions has been the refusal of this government’s appointed Speaker to recognize and designate the Leader of Opposition from the largest opposition party, thereby circumventing a provision that makes the latter an important voting member in Committees for appointment of members in various independent institutions.
In fact, no Lokpal was elected until March 2019 by delaying appointment on this ground, and finally following reprimands from the Supreme Court, the appointment was made without inviting the Leader of Opposition for voting, in an action completely contrary to law. While the matter to challenge the non-designation of Leader of Opposition has been pending before the Supreme Court even as the tenure of the current regime is nearing an end, no orders to rectify this gross anomaly have been passed.

Federalism itself is under a worst-ever attack. The concentration of economic power with the Centre following abolition of the Planning Commission and the setting up of the Niti Ayog, has put the states at the mercy of the Prime Minister’s office, and the relationship between the centre and the state has never seen such a low.

The judiciary is under tremendous attack from the executive, apart from the fact that some members of the higher judiciary appear more amenable to executive interference now then at any time in the last 40 years. While the executive is doing all it can to attack the independence of judiciary, the judiciary’s own failure to assert its independence is causing concern. Coupled with this, is the questionable actions of the Bar Councils.

**UPA VS NDA VS CITIZENS OF INDIA**

One of the ways to measure governance is to look at the legislative actions a government has taken. Examples abound of laws that are populist in nature that successive governments have passed from time to time, even if they lack teeth.

While even good laws on most occasions are just paper tigers, they at least indicate the moral contours of society and enable some persons to take advantage of legislation. For instance, progressive labour laws have been in existence since 1947 but have not benefitted a majority of workers, though workers have used these laws to their benefit from time to time. Or, to take another example - the law against Sexual Harassment has not stopped sexual harassment nor has it significantly reduced incidents of sexual harassment. However, it has brought the issue of sexual harassment in focus and many women have been able to gain confidence from it and use the law to deal with the problem.

While the abject condition of the poor in India, the deterioration of human rights, the rampant corruption and erosion of the autonomy of institutions were also prevalent under the UPA rule, the nature of the naked attack on legislative safeguards, scientific ideas, educational institutions, minorities and independent cultural, economic and investigative institutions under the NDA regime is unprecedented.

During the two terms of the UPA regimes, a large number of legislations and policy decisions were taken which were pro-poor and pro-marginalised, if at least on
paper. It is important to examine the legislative history during the UPA regime and the subsequent changes that the laws brought about. While the motives for passing such legislations may have been suspect, it is important to understand some of these measures genuinely benefitted the sections for whom they were meant, paradoxically, even as the record of the UPA regime was blotted by an overall anti-poor and anti-human rights stand.

Some of these legislations are:

1. The Right to Information Act, 2005
2. The Protection of Women from Domestic Violence Act, 2005
3. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
4. The Central Educational Institutions (Reservations in Admission) Act, 2006
6. The Unorganized Sector Workers Social Security Act, 2008
7. Right of Children to Free and Compulsory Education Act, 2009
10. National Green Tribunal Act, 2010
12. Sexual Harassment of Women at Workplace (prevention, Prohibition and Redressal) Act, 2013
13. Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2012
14. Criminal Law (Amendment) Act, 2013 dealing with changes in rape law
16. The Whistleblowers Protection Act, 2014
17. Real Estate Regulation and Development Act, 2016 (this was introduced by the UPA Government and finally passed during the tenure of the NDA Government)

Apart from the above, certain important Notifications and Rules, particularly for the conservation of the environment, were also brought in force by the UPA regime, some of which are noted below:

2. The Wetlands (Conservation and Management) Rules, 2010
3. Coastal Regulation Zone Notification, 2011

Notably, the UPA regime was also responsible for the following draconian and stringent legislations:

2. The Foreign Contribution (Regulation) Act, 2010 giving unprecedented control
to the Central Government over non governmental organization (NGOs) 


In this context, how do we view the last five years of the NDA regime from May 2014 to the present? 

The present Report deals with the major legislative and some of the policy changes brought about from 2014 onwards by the present NDA Government at the Central level. It’s a birds eye view of more than 20 laws and enactments that came about in the last five years. 

It demonstrates clearly how the principles enshrined in the Indian Constitution are being subverted through several legislative and policy changes. It also shows how, despite its claims to undertake welfare measures, the policies and legislations are an eyewash and a serious threat to democratic values. 

**LEGISLATIVE CHANGES (MAY 2014 -APRIL 2019)**

The present NDA Government has taken up several legislative measures during its term from May 2014 to April 2019. Some of these have already become laws, while other measures, though pushed for by the ruling party, could not be passed due to opposition and lack of time before the elections. Some laws were brought about by ordinances initially, through Notifications issued by various Ministries, while some came about via Money Bills. A few of these legislative measures also have their roots in the earlier UPA Government. 

It needs to be stressed that legislative measures only reflect a part of the intent and direction in which the Government is moving. Additionally, the use or misuse of existing laws can also further indicate the direction in which the Government is moving. For instance, hate speech laws have been in existence since more than a century. But hate speech has increased manifold since 2014. The use of the hate speech laws has also increased. However these laws are used not against the hate mongers of the party in power or its affiliates who are the major hate mongers but against those who are merely exercising their freedom of speech and expression. The present Government has inherited draconian laws such as Unlawful Activities Prevention Act, National Security Act and Armed Forces (Special Powers) Act and uses them to crush protests of various kinds. It does not require framing of new law for dealing with ‘insurgency’. ‘Encounters’ and custodial torture are not permitted by the law but they have become increasingly, both under the earlier and the present Government, ingrained as unaccountable executive policy and encouraged. 

Thus the Government does not necessarily need new laws to achieve its objectives even when the ends may be at times quite distinct from the objectives of the earlier Government. However in addition to, many major policy changes that require a
proper legislative framework whether they be demonetization, Goods and Services Tax (GST) or National Judicial Appointments Commission (NJAC), there have also been legislations passed towards populist measures. In a democracy where votes matter and certain amount of civil society resistance exists, many populist laws are passed from time to time and are enacted without there being adequate machinery or budgetary provisions to make them effective. Another way of achieving the same ends is through introduction of amendments to existing laws and exercise of delegated legislation. Therefore while changes in legislation may only reflect a segment of the approach of the Government, it requires an analysis to move towards a complete picture.

The present report is an attempt towards a limited analysis of the above and focuses on Central legislations passed by the present government. Following chapters of the Report contain an issue-wise analysis. While the report is focused on legislations which are already passed, we will indicate some of the Bills which lapsed but are likely to be pushed through if the present Government comes back to power.
THE JUDICIARY

NJAC AND JUDICIAL APPOINTMENTS

Article 124 of the Constitution provides that Supreme Court judges will be appointed by the President of India in consultation with the Chief Justice. There is a similar provision with slight variation to appoint High Court judges under Article 217. Powers are also given to the President for transfer of High Court Judges under Article 222. The President is required to act as per the advice of Council of Ministers, which is binding. Therefore, the ruling party would have the final say in the appointment of judges, though it would require to ‘consult’ the Chief Justice.

The origin of the issue over appointment of judges in India lies in what are known as the First, Second and Third Judges cases. In the First Judges Case, decided by seven judges in 1981, the Supreme Court, by a majority held that the Chief Justice of India’s view on appointment of judges did not have any primacy and the transfer of High Court judges under Article 222 was judicially reviewable. The Second Judges Case, decided in 1993 by a nine judge bench of the Supreme Court held that “consultation” with the Chief Justice meant concurrence and therefore the Chief Justice’s view had the primacy in appointments of higher judiciary as well as transfers of High Court judges, as long as he consulted with the 2 senior most judges of the Supreme Court i.e. the Collegium. In the Third Judges Case decided in 1998, the Supreme Court upheld what was said in the Second Judges Case while increasing the Collegium from 3 judges to 5 senior most judges of the Supreme Court, including the Chief Justice.

Hence, the law after the Third Judges case was such that the appointments and transfers have to be finally approved by the Government but the Government in turn is compulsorily bound to follow the decision of the Collegium.

In August 2014, within a few months after the present Government coming to power, the 99th Constitutional Amendment and the National Judicial Appointments Commission Act, 2014 were passed. The Collegium was done away with and instead a Commission i.e. ‘NJAC’ comprising of 3 judges of the Supreme Court, including the Chief Justice and two senior most judges, the law minister and 2 ‘eminent’ persons was to be constituted. The ‘eminent’ persons were to be appointed by a Committee consisting of the Chief Justice, the Prime Minister and the leader of the opposition and would be part of the Commission for three years. What was meant by eminence was not prescribed. More importantly, any two of the six-member commission could veto an appointment or transfer.

The above measures compromised the appointment system, giving the executive further powers to intervene in the independence of the judiciary.

Even without the Commission, the present government has been interfering
extensively with the appointment of judges, as seen from the following illustrative incidents:

In 2014, the government effectively prevented the appointment of Senior Advocate Gopal Subramaniam as a Supreme Court judge. Mr. Subramaniam had worked as an independent Amicus Curie in the Sohrabuddin encounter case and argued for transfer of the investigation to CBI, which ultimately led to the arrest of Amit Shah and transfer of the trial outside Gujarat. Similarly, Justice J. Patel of the Gujarat High Court, who was due to become a Chief Justice and may have been elevated to the Supreme Court, was denied these opportunities by incessant transfers. J. Patel as a judge, had appointed a Special Investigation Team in the matter of the police encounter of Ishrat Jahan by the Gujarat Police.

Similarly, the recent issue in the Supreme Court, concerning elevation of Justice K.M. Joseph also has its roots in the governmental interference. Justice Joseph had decided the case against the BJP Government in the matter of dissolution of assembly of Uttarakhand. Later, his elevation to the Supreme Court was in a state of complete impasse as the Central Government raised issues over his appointments on grounds of lack of seniority and lack of excessive representation from one state. After a delay of 7 months, during which period several other judges were elevated, the Centre only last year in April agreed to the appointment of Justice Joseph as a Supreme Court judge, causing loss of his seniority.

In 2015, a five-judge bench of the Supreme Court struck down the NJAC Act and the Constitutional Amendment as “unconstitutional and void.” It held that the collegium system, as it existed before the NJAC, would again become “operative”. The Supreme Court in this case rightly held that separation of powers was part of the basic structure of the Constitution, which the NJAC Act compromised. While agreeing that the collegium is an unsatisfactory and opaque system and requires to be addressed, the Supreme Court held that the same cannot be done by giving away the power of appointment in the hands of the executive or a commission which is structured in a way that can be controlled by the executive.

Even after the NJAC Act was struck down, the governmental interference in the judicial functioning continues unabated.
PRIVACY AND CIVIL LIBERTIES

THE AADHAAR (TARGETED DELIVERY OF FINANCIAL AND OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT, 2016

The project of providing a unique identification number to every citizen began during the UPA regime, without a legislative framework and only with an executive scheme in place. A draft bill was prepared which was placed before the Standing Committee of the Parliament. The Standing Committee in 2011, headed by a BJP leader Mr. Yeshwant Sinha, raised serious objections including authenticity of biometric data, failure to conduct a pilot survey, etc. In September 2013, the challenges to the Aadhaar project began when the Supreme Court began hearing the first challenge Aadhaar and passed an interim order stating that the Aadhaar cannot be made mandatory for obtaining any services or subsidies from the State.

When the present government came to power in 2014, its earlier concerns with the Aadhaar project suddenly evaporated. In March 2016, the NDA Government introduced the Aadhaar bill as a ‘Money Bill’. Every law requires money for implementation and many bills require money drawn from the consolidated fund of India. By this faulty logic most of the laws would be money bills and taking this logic further, Rajya Sabha would become an irrelevant institution. The disregard for constitutional provisions and traditions of the present government is very well illustrated by this. Knowing fully well that the bill may not pass the muster of the Rajya Sabha, the government brought in Aadhaar by way of money bill. The Rajya Sabha’s proposed amendments to the Aadhaar bill were ignored. Soon, the requirement of Aadhaar began to be made mandatory for several State related services and activities. The protests by the civil society and privacy activists over the safety of private information, reliability on biometric data, possible misuse of biometric data, cause for State surveillance, were not addressed. Several reports of Aadhaar data leaks came to light.

Civil society has roundly criticized the Aadhaar Act. To begin with biometric data on such a large scale is known to be an unreliable indicator of a person’s identity. Thus a large number of persons are likely to be denied basic facilities and subsidies because of this mismatch. In fact this has already happened when poor people were denied benefits of welfare schemes despite of having Aadhaar card. The scheme will lead to violation of fundamental rights of privacy and dignity, and constitutional freedoms, as every small step we take whether hiring a house, visiting a movie hall or hospital becomes known. The information can be given to private corporate houses for their sales pitch. Moreover, it can be used for mass and individual unbridled surveillance. A person’s existence can be wiped out just by turning off their Aadhaar number.

Concerned by the above, the Aadhaar Act came to be challenged and tagged with the challenge to the Aadhaar scheme and in 2018, the Aadhaar Act’s constitutionality
was upheld, by reading down certain provisions to the Act. Justice Chandrachud, who was part of the constitution bench, gave a dissenting judgment, which has been used by the Jamaican cour to strike down the unique identification law proposed in their country.

As of now, even the limited protection granted by the Supreme Court in the Aadhaar judgment is sought to be bypassed by way of the Aadhar and Other Laws (Amendment) Ordinance, 2019, by amending not only the Aadhaar Act but also the Telegraph Act and the Prevention of Money Laundering Act, by re-introducing the provision for Aadhaar authentication for banking, non-banking and telecom services, although it was read down by the Supreme Court. While, the word “voluntary” is mentioned in the Amending Act, the Supreme Court in its 2018 verdict has struck down Section 57 of the Aadhaar Act, thereby clearly meaning that no private entity can carry out Aadhaar authentication for any its services. The 2019 Ordinance also allows the government to retain its ability to make Aadhaar mandatory for provision of any service if it is required by a law made by the Parliament.
Demonetization has been one of the flagship schemes of the central government and advertised as the most effective method to curb black money and corruption. The withdrawal of 500 and 100 rupees notes from circulation took place in a dramatic fashion, wherein an announcement was made by the Prime minister on 8 November 2016 that from midnight onwards, the currencies of the said denomination would be out of circulation and would no longer be legal tender. Few days later, the improved objective was promoting digitization of the economy by encouraging cashless transactions. At the time of announcement, there was no cash made available for circulation to replace the withdrawn notes.

The demonetization had an immediate adverse effect on the majority of the population – i.e. the economically and socially marginalized. Those who made their living on a daily wage basis, small businesses depending on the day to day cash transactions were put in a severely difficult position with the liquidity completely drying up. The ATMs ran dry, and long queues existed everywhere for exchanging the notes or withdrawing money. Several people missed work and other important appointments to stand to exchange notes. Banks were completely ill equipped to handle the eventualities. This was further aggravated by the changing cash withdrawal rules on a daily basis. Even when the new legal tender was introduced it was through the higher currency of Rupees 2000/- first and then later Rs 500/- and Rs. 200/-. This caused hardships to the common people as there was no change available for 2000/- Rupees for a long time and the ATM machines were not calibrated to dispense the new 2000 and 500 rupee notes.

Ultimately, there has been no reduction in corruption and reduction of black money shown. In fact, the report released by the Reserve Bank of India in August 2018 shows that 99.3% of the demonetized currency was deposited back with the RBI. Without advance planning and equipping the Banking system it spiraled downwards into an abyss with disastrous consequences on the agricultural workers, daily wage workers in various industries and the middle class. The Small-scale industries, agriculture sector, were reeling under the shock leading to closing of businesses, inability to continue the cropping for the next season etc. There were instances of hospitals refusing treatment resulting in deaths. The Human cost was high and continues to be so, in its contribution to the massive job loss of 11 million people in 2018 alone.
Besides, the scheme lacked any prior notification and was never subject to any legislative scrutiny. This is contrary to the past practices. There have been two earlier instances of demonetization- first in 1946 and the second time in 1978. In 1946, an Ordinance was issued by the Governor General stating that Rs. 500, Rs.1000 and Rs.10,000 notes issued by the RBI would no longer be legal tender. In 1978, the President of India promulgated an ordinance called the High Denomination Bank Notes (Demonetization) Ordinance, 1978, which was replaced by the High Denomination Bank Notes (Demonetization) Act, 1978. As per the act, bank notes of Rs. 1000, Rs. 5000 and Rs. 10,000 were demonetized.

The Demonetization Policy of 2016 however, adopted the route below:

1. The Ministry of Finance issued a Gazette Notification (‘Ministry of Finance Notification I’) by which “banknotes of denominations of the existing series of the value of five hundred rupees and one thousand rupees” ceased to be legal tender with effect from 9 November 2016.

2. Thereafter, the Ministry of Finance issued another Gazette notification (‘Ministry of Finance Notification II’) by which it specified the denomination of the new Rs 2,000 notes.

3. The RBI issued a notification, inter alia, mentioning that a new series of banknotes called Mahatma Gandhi (New) Series having different size and design will be issued. The RBI also laid down a plan of action, including the process for exchanging the old banknotes with new ones. The Ministry of Finance Notification I mentions that the exchange of the old banknotes with the new notes will be allowed till 30 December 2016.

4. Thereafter, both the Ministry of Finance and the RBI issued subsequent notifications to clarify and adjust for additional circumstances.

As seen, unlike the methods adopted in 1946 and 1978, the 2016 demonetization policy was not backed by a Presidential Ordinance or an Act of Parliament.

Only after the 2016 policy was challenged before courts and possibly realizing the folly, the Specified Bank Notes (Cessation of Liabilities) Ordinance was issued by the President on 30 December 2016, much after the actual demonetization process taking place. This ordinance was then replaced with The Specified Bank Notes (Cessation of Liabilities) Act, 2017.
The introduction of the Goods and services Tax regime was portrayed to be one of the biggest tax reforms in India. This scheme however had its origin in the UPA regime, at which time the BJP had opposed it. The stated objective was to simplify the existing taxation structure and plug tax avoidance by having a single indirect tax leviable directly on the end consumer.

The present GST regime is problematic for various reasons. It leads to increasing centralization of power and damages the federal polity. The tax may be beneficial for the Union Government and large businesses, but the State Governments are being affected adversely. The state governments are in charge of the subjects of education, health, law and order and agriculture. For managing schemes and carrying out policies in these areas, the State governments need funds for which they raise taxes, depending on how much funds they need. Now the States will be completely dependent on the GST Council for the determination as to how much funds they get. Besides, when the State Government raises taxes for services, it is required to provide the services too. Being the same entity, this leads to the possibility of give and take between the State Government and the people and enhanced welfare schemes. By not being able to levy taxes themselves, states lose out on manufacturing activities in their state because they can no more offer tax incentives for manufacturers to invest in their states.

The GST regime has also arrived with several implementation obstacles with the small-scale business having been forced to completely revamp its business accounting style. The GST tax system being extremely technology driven, it became an urgent necessity for businesses to additionally invest into the GST infrastructure. The rolling out of GST therefore seems to have been done without effective planning. The monthly filings have been a huge burden for the small-scale industries as they have had to allocate a major time into merely account keeping. The timing of the GST rollout itself also resulted in huge damages for the small-scale sector, as it immediately followed the demonetization policy. Sectors like textile, media, pharma, dairy products which are small-scale family-based units have been adversely impacted with the introduction of GST with the final rates being higher than the earlier rates. Prices of many consumables used by the common people have also seen a rise.

With the GST regime, a GST state council was set up to determine the slabs of taxation. Initially, three slabs of taxation were determined which later, after public outcry, were reduced to two. The classification of goods within the slabs was of great significance as items of regular use and those of persons with disabilities were
allotted a higher rate of tax. The slabs have been changed from time to time depending on political expediency.

The entire regime has not only been rolled out hastily but also imposes a large burden on the small-scale businesses, without providing adequate infrastructure for it. In any case presently it is so complicated that even tax experts are finding it hard to understand the full implications.
AFFIRMATIVE ACTION

10% RESERVATION FOR ECONOMICALLY WEAKER SECTIONS

The Parliament has passed the Constitution (One Hundred and Twenty Fourth) Amendment Bill 2019, providing for a special reservation of 10% to economically weaker sections of citizens, not covered under any other categories of existing reservations in jobs and admissions to educational institutions. This does not apply to minority (linguistic as well as religious) educational institutions. As per the notification dated 31 January 2019, the criteria for persons eligible for this reservation are those who are not covered under the scheme of reservations for SCs, STs and OBCs and whose family has a gross annual income below Rs. 8 lakhs per annum i.e. Rs. 66,666/- per month. Also, those who own or possess immovable property as provided under the notification i.e. more than 5 acres of agricultural land, more than 1000 sq ft. residential flat, residential plot of 100 sq yards and above in notified municipalities and residential plot of 200 sq yards and above in other areas, are excluded from the definition.

The 10% reservation has received serious criticisms. The first being that reservation on purely economic grounds has been frowned upon by the Supreme Court in the Mandal Commission judgment of Indra Sawhney vs. Union of India.

Secondly, via the same judgment, the Supreme Court has capped the cumulative reservations to 50% and the addition of this new category of reservations will take the total reservations way beyond that. Hence, the chances of the same being struck down by the Supreme Court are high.

Thirdly, the income cap set by the amendment is highly problematic. The proposed income cap will cover nearly 80% of the open/general category members, thereby allowing the richer amongst them to corner the reserved seats. As per the 2014 report of the Rangarajan Committee, set up by the Planning Commission, the Below Poverty Line for rural areas is Rs. 32/- per day (less than Rs. 10,000/- per month) and for rural areas is Rs. 47/- per day (less than Rs. 15,000/- per month). Also, the annual income requirement for filing income tax is Rs. 5 lakhs per annum and above. As per the NABARD All India Rural Financial Inclusion Survey 2016-2017 report released in 2018, more than 99% rural households earn less than Rs. 66,666/- per month and would hence qualify for the reservation. The reservation notification allows persons earning up to Rs. 66,666/- per month to qualify for the economically backward category in jobs and seats.

Fourthly, the government jobs available have been reducing over a period, partly due to privatization and partly due to non-filling up of posts.
Fifthly, at one level, the attempt of the government seems to be an ideological one to invisibilise caste since reservations are meant essentially to confront social backwardness.

Hence, the amendment appears to be more of a populist measure, which may not hold up in court, and is done only to appease a particular constituency being the more affluent among the upper caste, open category citizens who are eligible.
The Foreign Contribution (Regulation) Act (‘FCRA’) was first enacted during the era of emergency (1976). The rationale of the Act was to prohibit the flow of foreign funds to political parties, candidates contesting elections to any public office, journalists, cartoonists, editors, owners, printers and publishers of registered newspapers and individuals in the service of the State or any of its official agencies and academics. Hence, political parties were barred from 1976 from receiving funding from foreign entities.

Organizations identified as being of ‘political nature’, specifically identified by the Central Government through a Gazette notification, could receive foreign contribution with prior permission of the Government. However, a system was laid down for associations undertaking activities related to a definite cultural, economic, educational, religious or social programmes, to receive foreign contribution, upon registration with the Government or through prior permission. This route was for non-governmental organizations. The registration was ultimately one-time only and was valid until the Government suspended or cancelled it through due procedure laid down under this law. Acceptance of foreign hospitality in violation of the provisions of this law and receiving foreign contribution in violation of FCRA provisions were made punishable offences, some of which invited a prison term of up to five years.

The 1976 FCRA was replaced by the 2010 FCRA, broadly laying down similar but tougher conditions. On 28 March 2014, the Delhi High Court vide an order pronounced the Bharatiya Janata Party (BJP) and the Congress guilty of having violated the 1976 FCRA and asked the government of India and the Election Commission of India (ECI) to “take action as contemplated by law” against the two parties. The ECI wrote to the home ministry that since the latter was the competent authority for implementing the FCRA, they should take action. However, no action was taken and both BJP and Congress filed appeals in the Supreme Court against the Delhi High Court judgment. The appeals were later withdrawn but no action was taken against these parties.

Thereafter, the Finance Act 2016 amended the FCRA vide an amendment and changed the definition of a “foreign source” in such a way that it would let the BJP and the Congress be off the hook from the implications of the Delhi HC judgment. This amendment, though retrospective was made to be applicable from 2010 onwards, and not before. This meant that donations received from foreign companies prior to 2010 were not covered by the retrospective amendment. In effect, the amendment has overridden the Delhi HC order.
Therefore, with the 2016 Amendment of the FCRA, the way is paved, retrospectively, for all political parties to legally receive foreign funding from Indian companies as long as they are compliant with the Indian foreign exchange laws. In the long run, this is likely to give rise to a much graver and direct risk of control over Indian politics by foreign nationals through ‘funding’ vide companies.

Not only is retrospective amendment for political parties questionable, the 2016 Amendment to the FCRA has been brought about by questionable means to avoid proper legislative scrutiny. The FCRA amendment was brought about by the Finance Act, 2016, which was introduced as a money bill. Therefore, in effect, the government amended the FCRA through the Finance Bill, which is a Money Bill. Given that the FCRA by and in itself would not qualify as a matter pertaining to a money bill as defined under Article 110 of the Constitution, the constitutionality of this amendment is questionable on these grounds.

Put simply, a political class that has no qualms taking money from foreign sources amended the FCRA to let itself off the hook for past violations, that opened the doors for all political parties to accept foreign funding, that paved the way for Indian businesses to access foreign capital, is now anxious to prevent the non-governmental organizations from accessing foreign funds, because some of them question the political parties' policies and ask for constitutional accountability.

It was then realized that the donations had actually been received even before 2010. Thus the 2018 amendment of FCRA is sought to be brought again through the Finance Act aiming at making the exemptions retrospective from the year 1976, when the original Act was first formulated. This would lead to the dissolution of the main aim of the foundation of the Act and would pave the way for political parties to accept certain foreign contributions and hospitality and would also clear their past accounts and nullify the High Court order of 2014 regarding the violation of FCRA by Congress and BJP.

While the amendments to the FCRA Act continue to give amnesty to the political parties, the same Act is being used to selectively target political opponents of the Government. Non Governmental Organisations are also covered by this Act and require registration under the Act for receiving foreign funds for human rights activities. On the one hand, political parties have been given retrospective exemption while on the other hand this Government has been aggressively pursing NGOs who are seen as holding the Government and its functionaries as accountable. As of today, FCRA licenses of thousands of NGOs have been suspended and amongst them are INSAF working on issues of human rights, Peoples Watch in Tamil Nadu working on Dalit issues, Lawyers Collective run by Indira Jaising on legal and human rights issues and Centre for Justice and Peace run by Teesta Setalwad and Javed Anand which has been spearheading the legal fight for the victims of 2002 Gujarat carnage.
ELECTORAL BONDS

Electoral bonds are monetary instruments that any citizen can buy from specified banks and then give to a political party, which is then free to redeem the bond for money. The bonds are anonymous. No one is required to declare their purchase of these bonds and political parties do not have to reveal the source of the receipt of the bonds. A donor can purchase these bonds from specified branches of State Bank of India in multiples of Rs 1,000, Rs 1 lakh, Rs 10 lakh or Rs 1 crore and donate it to any registered political party. The party can encash it in its account like a bearer cheque.

The route of Finance Bill, 2017 was used for bringing in the concept of electoral bonds in India. The amendments carried out through The Finance Act, 2017 were also done in a manner that prevented a vote in the Rajya Sabha. They were all introduced via the Finance Bill, which was certified by the speaker of the Lok Sabha as Money Bill even though they violated the definition of a ‘Money Bill’ provided in Article 110 of the constitution.

The above has created a situation where, individuals and companies can now donate their money directly to political parties without the public knowing. There is no centralized information available to show the amount of funding either. Data about how much money private companies have spent on electoral bonds, will only be in their respective accounts and financial filings, raising the risk of shell companies being used to route money into political parties.

Additionally, the amendment has removed the obligation of political parties to record and report the identity of electoral bonds-style donors to the two important regulatory bodies, i.e. the Election Commission and the Income Tax (IT) Department.

Until 2017, under Section 13A of the Income Tax Act, 1961, all political parties registered with the Election Commission were required to maintain details of donations of Rs 20,000 and above, received from any source, and have them audited. These were essential requirements for every political party to get exemption from paying income tax every year. The Finance Act, 2017, absolves all political parties from the duty of keeping records of donations received through electoral bonds and having them audited.

Conveniently, the Companies Act 2013 has also been amended making the process more opaque. Till 2017, private corporations could donate not more than 7.5% of their average net profits made during the immediately preceding three financial years to political parties. Every private company making such donations was required to publicly disclose in its profit and loss account, how much money is donated to which political party in a given year. The Finance Act, 2017, has
removed all these transparency requirements from Section 182 of the Companies Act 2013, from April 2018 onwards.

Now a private corporation will be able to make donations without requiring to have commercial operations, let alone earning profits. There will be no obligation to publicly disclose the amount so donated and the identity of the recipient political party. Only the total sum of money so donated will be reflected in the profit and loss account of the company every year.

The path of receipt of anonymous donations has been made clear by the NDA Government, by avoiding proper legislative scrutiny and introducing the amendment bill as a ‘money bill’, as well as by amending the ancillary legislations of the Companies Act, 2013 to ensure that funds are received without any scrutiny. The matter challenging Electoral Bonds is pending before the Supreme Court, and one can only hope that in the interest of free and fair elections, the same is struck down.
THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015

The current government replaced the Juvenile Justice (Care and Protection of Children) Act, 2000 with the Juvenile Justice (Care and Protection of Children) Act, 2015. The new Act broadly follows the earlier law, in terms of dealing with neglected juveniles and juveniles in conflict with law. While the earlier law did permit adoption through one Section, the new law has an entire chapter on adoption. Mandatory registration of homes housing children is required. However, unlike the earlier legislation, the new Act allows children between 16 and 18 years, alleged to have committed 'heinous offences' to be tried and sentenced as adults. The Act allows for the constitution of a Juvenile Justice Board, which includes psychologists and sociologists, to decide whether a juvenile in the age group of 16-18 years should be tried as an adult or not.

In its Two Hundred Sixty Fourth Report, the Department Related Parliamentary Standing Committee on Human Resource Development on The Juvenile Justice (Care and Protection of Children) Bill, 2014 concluded in Para 3.21 that “the existing juvenile system is not only reformatory and rehabilitative in nature but also recognizes the fact that 16-18 years is an extremely sensitive and critical age requiring greater protection. Hence, there is no need to subject them to different or adult judicial system as it will go against Articles 14 and 15(3) of the Constitution.” This recommendation was clearly ignored by the present government at the time of enacting the new law.

The new act has made several problematic changes, as seen below:

• Section 20 of the new Act gives power to the juvenile courts to decide whether or not, a formerly accused child upon turning 21 years of age, has undergone reformatory changes or can be a contributing member of the society. Such an inquiry is highly subjective and prone to arbitrariness. It is also contrary to Article 2 of the UN Convention on the Human Rights of the Child, which prohibits discrimination of any kind, including on grounds of religion, property and other status.

• Section 15, dealing with preliminary assessment into heinous offences by the Juvenile Justice Board, in effect attributes guilt before trial. The scope of Section 15 is hence against the test of procedural fairness under the Constitution.

• The new Act also has a loophole wherein it is silent on the order that can be passed if the Juvenile Justice Board decides not to transfer the child to the adult court.

• Section 2(33) of the Act defines the term "heinous offences" as inclusive of all the offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment of seven years or more. The definition is
too broad. Persons above 16 years can now face severe punishments even for offences that are not against the body, such as trading in certain drugs, attempts to commit robbery armed with weapons, consensual sex with persons below the age of eighteen, etc.

- Section 19 (3) provides that the Children’s Court has to ensure that “the child who is found to be in conflict with the law is sent to a place of safety till he attains the age of twenty one years, thereafter, the person shall be transferred to a jail. This provision violates Article 37(b) of the UNCRC which states “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” In this case, detention of a child under the new Act is the only measure prescribed and thus institutionalization is not the last but the first resort.

Subjecting children to the same criminal justice system as adults is premised on the flawed assumption that children and adults could be held to the same standards of culpability and that children are capable of participating in legal proceedings like adults.

The transfer system under the new Act has been in existence in the United States for over two decades. Multiple studies in the US have concluded that it has been ineffective in addressing juvenile crime, public safety and recidivism. The Task Force on Community Preventive Services published that “…transfer policies have generally resulted in increased arrest for the subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behaviour, available evidence indicates that they do more harm than good”. Around 80% of youth released from adult prisons reoffend often going on to commit more serious crimes.

As per a critique of the new Act by the Centre for Child and Law, NLSIU Bangalore, the new Act evinces a poor appreciation of the data on juvenile crime. From 2003-2013, the percentage of juvenile crimes to total crimes has marginally increased from 1.0% to 1.2%. The percentage of juvenile crimes to total crimes remained constant at 1.2% in 2013. In 2013, juveniles between 16 and 18 years apprehended for murder and rape constituted 2.17% and 3.5% of all juveniles apprehended for IPC crimes. They also constituted a meager 1.30% and 3.29% of all persons arrested for murder and rape in 2013. The above figures lend zero credence to the statements that juveniles are significantly responsible for heinous crimes. In fact, the Standing Committee analyzed the National Crime Record Bureau data on juvenile crime and concluded that “The objective analysis of the data of the National Crime Records Bureau placed before the Committee makes it abundantly clear that the percentage of juvenile crimes in India i.e 1.2 per cent of the total child population of the country is quite low. Secondly, some incidents of juvenile crime, though a cause of serious concern
should not be the basis for introducing drastic changes in the existing juvenile justice system.”

There has been no requirement or need shown by the present government, to change the age related provisions in the earlier Juvenile Justice Act. It therefore appears that in the wake of the rape and murder in Delhi, wherein a juvenile was also arrested, the Government amended the Act only to score some brownie points without taking any effective measures to safeguard women and children in the country. The amendment hence appears to have been introduced without any thought on the impact it would have on children across the country and appears to be a pure populist measure.

**CHILD LABOUR PREVENTION (AMENDMENT) ACT, 2016**

This Amendment while giving an impression that it is anti child labour has serious problems. Article 24 of the Indian Constitution restricts employment of child labour in hazardous industries. However under this amendment, the number of hazardous industries where children below 14 years of age are not allowed to work has been reduced from the originally notified 83 industries to only mining, explosives and those included in the Factories Act. Even this list can be reduced, not by a legislation of the Parliament but by the executive.

The amendment also permits children to work in family or family enterprises in vacations and after school hours. This is bound to lead to child labour being used especially in home based work such as beedi making, scavenging, domestic work, etc.

**AMENDMENTS TO LAWS PUNISHING RAPE**


The main controversy generated by the 2018 ordinance has been in providing death as a possible punishment, for rape of girls under 12 years of age. Many have criticized this decision to amend the important criminal laws vide an ordinance to be a hasty and a knee jerk reaction, without substantially improving the conditions of women and girls across the country. The broad outline of the 2018 ordinance, which has now been passed as legislation, is laid out below:
1. **Increased Punishments**: Minimum Punishment for rape on a woman who is under the age of 12 years is 20 years of rigorous imprisonment and it may go up to life imprisonment for the remainder of convict’s natural life and fine or it can be death sentence also. Minimum Punishment for Gang Rape on a girl who is under the age of 12 years is life imprisonment for the remainder of convict’s natural life and fine or the death sentence. Minimum punishment for rape on a girl of 12 years or above but less than 16 years of age has been increased from 10 years of rigorous imprisonment to 20 years of rigorous imprisonment. Minimum Punishment for Gang Rape on a woman of 12 years or above but less than 16 years of age is life imprisonment for the remainder of convict’s natural life and fine.

Minimum punishment for Rape on a woman of 16 years and above has been increased from rigorous imprisonment of 7 years to 10 years of rigorous imprisonment.

2. **Imposition of Fine on convict and its benefit to the victim**: Courts shall impose fine on the accused in such a way that it is just and reasonable to meet the medical expenses and rehabilitation of victim and such fine shall be paid to the victim.

3. **Mandatory Completion of Investigation by Police within 2 months in all cases of Rape**: Earlier law had prescribed that investigation in cases of rape in relation to a child may be completed within 3 months from the date of information to the police but now this relaxation has been taken away and it has been made mandatory for the police to complete investigation in all kind of rape cases against women (including child) within 2 months.

4. **Mandatory completion of Trial or Inquiry by Court within 2 Months**: The earlier law had prescribed that an inquiry or trial related to case of rape of all description shall, as far as possible, be completed within a period of 2 months from the date of filing of charge sheet by police but now the term “as far as possible” has been removed, making it clear that the time frame is now mandatory. However, experience with various other laws where mandatory time limits have been prescribed, shows that these time limits are hardly ever met and the compulsion to complete investigation and trial within a prescribed time limit, without provision of adequate infrastructure, can lead to injustice.

In 2012, there was a country wide outrage against the Delhi bus gang rape and murder. At that time, the then Government rather than hastily issuing ordinance, appointed Justice Verma Committee which heard various stake holders and experts, including women’s organizations, on how sexual violence must be addressed vide laws. That time too, there were vehement demands for introducing the death penalty but the Verma Committee had decided against imposing the death penalty as the same has neither proven to have a deterrent effect nor is it a solution to
addressing the widespread problem of sexual violence.

With bringing in the 2018 Ordinance and introducing the death penalty, the Government has failed to realize that it is the certainty of punishment and not the severity which acts as a deterrent. In a situation where various reports across the country have shown that most instances of rapes are by family members or people known to the victim, prescribing death as a possible punishment seems absurd and puts the victim in a more socially vulnerable position. The ordinance also seems to solidify India’s stand on the death penalty as a punishment – which seems to be drastic and done without legislative mandate. The death penalty helps no one but the party in power to make a claim that it is serious about child and women sexual abuse without doing anything concrete to better the situation. In fact, both Kathua and Unnao incidents showed how the members of the ruling party were involved either in the rape itself or in protecting the accused.

A large number of countries have done away with the death penalty altogether. A country cannot even be admitted to the European Union unless it abolishes the death penalty, even for crimes against terrorism. In India, on the other hand, we are seeing the dangerous trend of providing death penalty for increasing number of crimes.

**THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) BILL, 2018 (TRIPLE TALAQ BILL)***

Background

On 22 August 2017, the Supreme Court of India in the case of Shayara Bano vs. Union of India unequivocally declared that the practice of instantaneous Triple Talaq ('Talaq-e-Biddat'), prevalent amongst Sunni Muslims, is in violation of Article 14 of the Indian Constitution and the Shariat Act. The decision was by a five judge Bench with 3 judges striking it down while 2 other judges (the minority) expressing their anguish at this practice at the same time asking the Legislature to take action against triple talaq. In view of the majority judgment even without legislative intervention instantaneous triple talaq has been outlawed. Consequently, the pronouncement of instantaneous triple talaq has no effect on the legal status of either a Muslim marriage or a Muslim wife.

Following the judgement of the Supreme Court, the Government of India introduced two Bills in the Parliament and in the meanwhile the President promulgated Ordinances on three occasions, criminalizing the pronouncement of instant triple talaq by a Muslim husband. The object and substance of the Bills and the Ordinances were the same – to criminalize the act of pronouncing triple Talaq, an act that anyway has no effect in law. While the Bills have lapsed, the latest Ordinance promulgated by the government, continues to operate.
Salient Features of the Bill/Ordinance and a Critique of its Provisions

The Muslim Women (Protection of Rights on Marriage) Bill makes all forms of Talaq-e-Biddat, not only void, but also illegal, and a cognizable, non-bailable offence, punishable with imprisonment of up to three years. Given that the pronouncement of instantaneous triple talaq has no legal impact on the validity of a marriage, it essentially criminalizes an ineffective action of the husband as a criminal offence.

The pronouncement of Triple Talaq, having no legal impact, can at best be regarded as an intention of the Muslim husband to dissolve the marriage or desert the wife. In no other personal law that exists in India, desertion of a wife or expression of intention to divorce is a criminal offense. Further, none of these Bills/Ordinances apply to men of any other community/religion expressing such intentions of divorce. In view of this, it becomes obvious that the proposed bill has a skewed objective of punishing Muslim men, and no others, for an act that has no effect in law.

The Bills/Ordinances seems to have not taken into consideration the welfare of the women it purportedly seeks to benefit. To the contrary, it makes Muslim women more socially and economically vulnerable. With the husband being in jail, Muslim women are more likely to be deprived of financial security, and of their right to stay in the matrimonial home by the husband’s family. While the Bill makes provisions for a ‘subsistence allowance’, this has not been done by way of an additional right. In fact, the provision for a ‘subsistence allowance’ is regressive per se and as compared to the law on maintenance which is more nuanced and evolved. The allowance is therefore giving a Muslim woman, much less than what she is legally due.

Further, a criminal complaint can be lodged not only by the woman but at her behest by any person related to her by blood or marriage, with no specification of the degree of separation between the related person and the woman. Otherwise, the general law for offences relating to marriage, clearly specifies who can file on behalf of the woman and for any other person related by blood or marriage, permission of the Court must be taken. Thus, the Bill makes it possible for any relative of the woman to use this law to exact revenge on the Muslim husband, which is commonly seen in cases of inter-religious marriage.

The punishment prescribed under the Bill/Ordinance is also excessive and does not meet the standards of proportionality. If one must compare, while the punishment for pronouncing triple talaq is up to three years imprisonment, under other Indian penal provisions - in cases of rioting, rioting with deadly weapon, the punishment is for two years; for bribery it is one year; for negligently causing spread of infectious diseases and food adulteration, it is 6 months or fine or both. There appears to be a clear disparity in the offence and punishment prescribed.

It is clear that the Bills and Ordinances not only reflect the attempt of the
Government to stigmatize and isolate the Muslim community but are also illustrations of how the Government has attempted to bypass and manipulate the parliamentary process. When efforts at passing the Bill before the Parliament failed, it was promulgated as Ordinances using the extraordinary and emergency powers vested in the President by the Constitution of India, without there being a necessity for the same.

**THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2018**

*Background*

In April 2014, the fundamental rights of the transgender population in India were recognized and affirmed by the Supreme Court in its judgement in NALSA vs. Union of India. Without any heed to the express law laid down by the Supreme Court, The Transgender Persons (Protection of Rights) Bill, 2018 (hereinafter referred to as 'The Bill') was first introduced in the Lok Sabha in August, 2016. It was passed in December 2018, amidst much uproar over its regressive provisions. The Bill has now lapsed as it failed to come up for a vote before the Rajya Sabha.

*Salient Features of the Bill and a Critique of its Present Provisions*

The Bill is largely not in line with the decision of the NALSA judgement. Key provisions of the Bill, which are problematic are as follows:

- If any transgender person wants to get an identity certificate, they must make an application to the District Magistrate and be inspected by a ‘Screening Committee’. This is not only a discriminatory and offensive provision, but is also against the most fundamental tenet of the NALSA judgement, according to which self-determination is the only form of determination/ identification. The Bill clearly lacks a nuanced understanding of gender fluidity and the sexuality spectrum, even while providing for self-perceived gender identity under Section 4 of the Bill. The Bill also sets up a gender certification regime, which is contrary to the right of equality and privacy. Furthermore, the Bill fails to guarantee a confidential certification process and data privacy.

- Under the Bill, any transgender person who identifies either as male or female, and wants legal certification with this gender identity, must compulsorily go through sex reassignment surgery as per this Bill. This again is a violation of the SC order, advocating self-determination and to the contrary allows for intervention from the State in an extremely personal decision for individuals.

- The Bill also fails to protect intersex children from irreversible gender reassignment surgery authorized by parents or guardians, without the informed participation of the children.

- The Bill provides that if any parent or member of immediate family is unable to
take care of a transgender person, they should be placed in a rehabilitation center. Even though the Bill gives the right of family residence first, this completely turns a blind eye to the fact that often a lot of abuse faced by LGBTQ children is at home. It also derecognizes the Hijra families and communities that have traditionally been the support for trans children for many generations.

- Sections 3 and 10 of the Bill prohibit discrimination against transgender persons in matters of education, accommodation, employment etc. However, notably, the Bill does not provide for any reservations in this regard (as has been long-demanded by LGBTQ activists). It also does not provide for a detailed enforcement mechanism for this right to non-discrimination and the penalties for violation thereof, especially in the context of private entities and persons.

- The Bill criminalizes organized begging, thus further attacking the Hijra communities and their means of survival. At the same time the Bill is completely silent on special affirmative actions to provide proper access to education, health, and other public services to a hitherto marginalized population.

- The Bill fails to recognize the right to participation of children in their self-perceived gender identity, and hence, under Section 5, when it provides for parents or guardians to make applications to the District Magistrate for gender certification on behalf of minor children, it fails to ensure that the children themselves are informed and included in the process. Also, in case of very young minor children, the determination of gender identity should be postponed till they can themselves participate in the decision in an informed manner.

- There is no provision for revision of the gender certificate, except in cases where transgender persons undergo gender reassignment surgery to a male or a female. This does not only make it impossible for adults to change their gender certification without surgery, but also means that children who did not participate in the process of their gender certification cannot reverse the process without surgery.

- The Bill shies away from adequately recognizing that offences against transgender persons, on account of their gender identity, amount to hate crimes, over and above an ordinary criminal offence, and hence should attract additional criminal charges, like in the case of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This Bill imposes the same sentence that is 6 months to 2 years for all crimes against transgender persons. This, in the case of many offences, especially sexual offences, is significantly lower than the punishment that would otherwise be accorded under ordinary criminal law.

Thus, the Bill as it presently stands arguably does more harm than good for the transgender community. It urgently needs to be revised and brought in line, both with the NALSA judgement as well as with the demands of the transgender community and their activists.
THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2018

There has been a strong campaign to have a comprehensive over-arching legislation addressing trafficking of persons despite several laws dealing with trafficking, with sometimes inconsistent and contradictory approaches. Provisions of the Indian Penal Code (sections 370 to 373) define and penalise trafficking in persons including for habitual dealing with slaves and buying and selling of underage girls for prostitution. The Immoral Traffic (Prevention) Act, the Juvenile Justice (Care and Protection of Children) Act, the Bonded Labour System (Abolition) Act, the Prevention of Begging Act, the Children (Pleading of Labour) Act, 1933 and the Child Labour (Prohibition and Regulation) Act, 1986 etc. also address the issue of trafficking in specific areas with different approaches.

In 2015, the Ministry for Women and Child Development assured the Supreme Court in the case of Prajwala vs Union of India that they had set up a committee to understand the existing law and draft a comprehensive Bill covering all aspects of trafficking. However, the new Bill, which lapsed as it did not secure a passage in the Rajya Sabha before Parliament was dissolved, added to already existing confusion and continues the moralistic approach of raid-rescue and rehabilitation approach.

While the Bill incorporates the definition of trafficking in persons as found under section 370 of the Indian Penal Code i.e. prohibits all forms of trafficking for exploitation, it incorporates a new category called “aggravated forms of trafficking” which too are acts already criminalised under the existing law. Further, aggravated forms of trafficking have a higher punishment of 10 years to life though the acts constituting the offence of aggravated offences is not necessarily more serious than that defined under section 370 wherein the punishment is 7 to 10 years.

Many activists expressed fears that provisions of the Bill categorised a person who encourages another to migrate illegally into India or for an Indian to migrate to another country as aggravated form of trafficking. There is an attempt on the part of the state to criminalise migration in the guise of trafficking when unauthorised travel is already dealt with under the Passport Act.

This Bill further complicates the institutional mechanisms by creating 10 different agencies including the anti-trafficking officers different agencies including the anti-trafficking officers, units, committees and a bureau at the district, state and national levels. These agencies have no representation from affected communities thus completely ignoring the perspective of persons who the law seeks to protect.

The Bill, ignoring the recommendations of the panel appointed by the Supreme Court while hearing the matter of Budhadev Karmaskar v. State of West Bengal, amongst which were the recommendations for a community-
based rehabilitation approach and revision of the ITPA, continues to rely on the raid, rescue and rehabilitation model. This model is especially problematic with sex workers whose experiences show it results in large-scale human rights violations, and increases vulnerabilities due to lack of income on account of incarceration.

Further, the Bill ought to have provided for best efforts for family members being trafficked to be kept together as far as possible, as also immunity from prosecution for trafficking victims crossing international borders without proper procedures and also assistance to them in procuring identity papers. Repatriation of a victim, whether within the country or to another country, should be a right of the victim and a transparent, expedited process in the best interest of the victim should be adopted with her informed participation, and should not heavily reliant on the wide discretion of the Anti-Trafficking Committee. Notably, the procedure after a victim is produced before the Anti-Trafficking Committee remains undefined, thus giving the Anti-Trafficking Committee wide unregulated powers.

While the Bill provides immunity to victims for crimes committed under coercion or threat of death or grievous injury, the burden of proving the same is upon the victim of trafficking. Furthermore, the Bill provides for confiscation or attachment of any property of even accused persons during trial, and the burden of proof to prove that such properties are not acquired or used in the commission of the offence, is on the accused. This may be a prejudicially heavy burden on the accused and may even interfere with the defence of their cases.

In sum, the Bill violates Art 19 (1)(g) of the Indian Constitution by laying down forced repatriation or custodial rehabilitation. It provides no space for ‘decisional autonomy’ as spelt out in the Supreme Court’s right to privacy judgment and adopts a carceral approach to what is essentially a socio-economic problem. It is ridden with a complete denial of the structural realities of poverty and inequalities.

THE SURROGACY (REGULATION) BILL, 2016

Background

For a decade there have been discussions on an Indian legislation regulating Assisted Reproductive Technologies (‘ARTs’). Surrogacy formed one part of this proposed Bill. Ignoring all the debates and consultations around this Bill that was regulating a whole industry around ARTs, the “Surrogacy (Regulation) Bill 2018, (hereinafter referred to as the Bill) was first introduced in the Lok Sabha on 21 November 2016 and passed hurriedly in December 2018 with almost no discussion. The Bill has lapsed as it failed to come up for a vote before the Rajya Sabha.
Salient Features of the Bill and a Critique of its Present Provisions

The Bill completely prohibits commercial surrogacy in any form whatsoever, only allowing for altruistic surrogacy. The Bill has no preamble for us to understand why it does so, but it is presumably based on the premise that any money exchange for the reproductive labour done by the woman is exploitation. Instead of regulating the practice of surrogacy, so that the actual exploitation of commercial surrogates, through violation of their human rights as well as the extremely low payments made to them for their services, it actually takes a moral position on reproductive labour and bans their source of income itself.

The Bill has several arbitrary requirements and conditions for altruistic surrogacy too. For instance, only a woman between the age of 25 to 35 years who has been married and has a child of her own, and is a close relative of the intended couple, can be a surrogate. The requirement of a ‘close relative’ not only creates issues with regards to succession or inheritance, but also encourages the exploitation of women’s body by her family with no remuneration. Further, no woman can act as a surrogate more than once in her lifetime. The Bill also provides that only infertile couples married for at least five years who are Indian citizens, wherein the female is between 23 to 50 years and the male is aged between 26 to 55 years, having no surviving children, can avail of surrogacy. It thus discriminates against many others like, homosexual persons, single persons, unmarried couples, couples already having children, etc. For the times that we live in, with the nature of relationships and families constantly changing, this is an extremely narrow and non-inclusive model.

The Bill reinforces the patriarchal paradigm, taking away the agency of women over their reproductive labour, and their right to monetize it. The Bill takes away the opportunity from all those women who were earning a livelihood through commercial surrogacy. Moreover, by banning and making it completely illegal, it pushes the practice of commercial surrogacy into the black market, which is likely to be even more exploitative towards the surrogate mothers, due to a complete lack of regulation.

The Bill, hence, is regressive in every way and only seeks to enforce a patriarchal and paternalistic mindset on the practice of surrogacy, without doing anything to actually protect the rights of surrogate mothers, improve their socio-economic conditions or minimize their exploitation.
LAND ACQUISITION

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (SECOND AMENDMENT) BILL, 2015

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 replaced the Land Acquisition Act, 1894. The 2013 Act, while a step forward from the 1894 Act, was itself riddled with problems. Thereafter, the current government introduced the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015 (‘the Bill’) seeking to amend the principal Act passed in 2013.

The Bill enables the government to exempt five categories of projects from the requirements of a social impact assessment, restrictions on acquisition on multi-cropped land, and consent for private projects and public private partnerships projects. The five categories of projects are: defense, rural infrastructure, affordable housing, industrial corridors and infrastructure including Public Private Partnerships (PPPs) where government owns the land.

These five types of projects are sought to be exempt from the provisions of social impact assessment, restrictions in case of multi-cropped land and the consent envisioned under the Bill are too broad and may cover a large number of so-called public purpose projects. Moreover, there is lack of clarity in defining the five types of exempted projects. Consequently, there will be no cap on the area of multi-crop fertile agricultural land that can be acquired.

As per the 2013 Act, land could be acquired only with approval of 70% of land owners for PPP projects and 80% for private entities. However, the amendment sought to be brought in by the NDA removes this provision of 'consent' for acquiring lands for the five exempted purposes.

According to the 2013 Act, if the land remains unutilized for five years, then it needs to be returned to the owner. But according to the Bill proposed by the NDA government, the period after which unutilized land needs to be returned will be five years, or any period specified at the time of setting up the project. This gives excessive powers to the government and entity acquiring the land.

According to the 2013 Act, land can be acquired for any private ‘company’. But according to the proposed Bill, land can be acquired for any private 'entity', which also includes other types of privately controlled entities such as proprietorship concerns, partnerships, societies, trusts, etc. It enables acquisition of land for private hospitals and private educational institutions also which was not allowed earlier.
As per the new law, if any government official commits an offence during the process of acquisition, he/she cannot be prosecuted without prior sanction from the government, which again is an additional step needed for prosecution and which increases the possibility of this power being misused.

Inspite of this Bill not still being passed and the Ordinance to introduce it also having lapsed, the BJP led governments in different states have brought in dilutions to the 2013 Act bypassing this process, by way of introducing state amendments and rules.
ENVIRONMENTAL LAWS

Background

Originally the Indian Constitution did not explicitly contain provisions for protection of the environment. These provisions were inserted by way of Article 48A, which provides as a directive principle of state policy, an obligation on the part of the State to protect and improve the environment and safeguard the forests and wildlife of the country. In addition, Article 51A(g), provides that every citizen is duty bound to protect and improve the natural environment. Further, the Supreme Court in several leading cases has recognized the right to a healthy environment as an integral part of right to life under Article 21 of the Indian Constitution.

Pursuant to the United Nations Conference on Human Environment and development held in Stockholm (known as ‘Stockholm Conference’) in 1972, the Indian government enacted the principle laws for the protection of environment such as the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986 enforced by the Ministry of Environment and Forest (MoEF), Government of India, and several other laws followed. Thereafter, the United Nations Conference on Environment and Development (known as ‘Earth Summit’) was held in 1992, closely following the introduction of the New Economic Policy in India. The Earth Summit raised several concerns over sustainable development and resulted in the Rio Declaration of Environment and Development and the United Nations Framework on Climate Change. The principles of Environmental Impact Assessment, constitution of National Green Tribunal, which are key features of environmental jurisprudence in India, have been derived from the Rio Declaration.

India since, has developed an extensive framework of environmental laws and has historically shown legislative intent to fulfill its international obligations, coupled with wide recognition of environmental laws by Indian courts. However the opening up of the economy for trade, exploitation of resources and unparalleled development, has led to systematic de-regulation of environmental protections and regularization of wrongs.

Dilutions / Amendments of Environmental Laws

Since May 2014, the crisis in environment policies in India has reached unparalleled proportions and worsened by leaps and bounds. Signaling this change in approach, immediately upon coming into power, the new government cleared at least 230 projects environmental clearances of which were held up by the previous government and lifted the moratorium on new industries in critically polluted areas. Confederation of Indian Industry (CII), an Indian business lobby group, submitted 60 action points to the government, seeking specific changes in policies to remove
hurdles in securing environment, forest and other green clearances and to ease the process. There has since been a spate of changes in environmental laws in order to allow for urbanization, industrialization and unfettered development to the detriment of the environment.

Vide an Office Order dated 29th August 2014, the MoEF constituted a High-Level Committee under the Chairmanship of T.S.R. Subramanian, Former Cabinet Secretary, to review various Acts administered by the MoEF, including –

(i) Environment (Protection) Act, 1986
(ii) Forest (Conservation) Act, 1980
(iii) Wildlife (Protection) Act, 1972
(iv) The Water (Prevention and Control of Pollution) Act, 1974
(v) The Air (Prevention and Control of Pollution) Act, 1981, and
(vi) The Indian Forests Act, 1927 (added to this list on 18th September 2014)

The stated objective of constituting this High-Level Committee was for the Committee to recommend specific amendments needed in each of these Acts so as to bring them in line with current requirements and objectives and to draft proposed amendments in each of the aforesaid Acts to give effect to the proposed recommendations.

The Committee submitted its report in November 2014 seeking to overhaul the country’s environmental laws. However following objections and depositions by civil society, the Parliamentary Standing Committee rejected the report citing that some of the essential recommendations contained in the report “would result in an unacceptable dilution of the existing legal and policy architecture established to protect our environment”. However, the government quietly retained a legal consultant to examine the report and also proposed a draft Environmental laws (Amendment) Bill, 2015 broadly based on the recommendations, which evoked heavy criticisms and is kept in abeyance.

While the T.S.R. Subramanian Committee report is in abeyance, the environment ministry has been stealthily implementing its controversial recommendations and amending the environmental laws to dilute the protections guaranteed under them surreptitiously through notifications thereby bypassing the parliamentary process. Several of the amendments have been carried out without notice to the public inviting objections. Some of these amendments have been introduced in the vicinity and in anticipation of proposed “pet” urbanization projects of the government or its crony partners, with a view to facilitate them and avoid the essential questions involving environmental impact of such projects.

Another recommendation of the TSR Subramanian Committee is quietly underway with serious attempts being made by the government to curtail the independence and autonomy of the National Green Tribunal, through changes in rules
governing qualifications, experience and other conditions of service of members of the Tribunal by way of the Finance Act, 2017. Meanwhile, the zonal benches of the National Green Tribunal, which prior to the 2014 had proved to be an extremely effective body for protecting the environment and addressing violations, have been rendered inoperational for stretches of time due to lack of appointment of members, resulting in many policy changes and violations remaining unchallenged.

ENVIRONMENTAL IMPACT ASSESSMENT NOTIFICATION, 2006 (EIA NOTIFICATION)

The EIA Notification was issued in September 2006 under sub-rule 3 of Rule 5 of the Environment Protection Rules, 1986 for imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts. It was issued in supersession of the notification dated 27th January 1994. Some important features are:

- The EIA Notification made it mandatory to obtain prior environmental clearance from the regulatory authority before any construction work or preparation of land (except for securing the land) by the project proponent is started on the project or activity. It classified projects and activities into two categories “A” and “B” in the Schedule to the notification.
- The regulatory authority for obtaining prior environmental clearance for category “A” projects was the Central Government through its Ministry of Environment and Forests - MoEF (now Ministry of Environment Forests and Climate Change), and the notification also constituted State Level Environment Impact Assessment Authority (SEIAA) as the regulatory authority for category “B” projects.
- The Central Government and SEIAA were to base their decisions on the recommendations of the Expert Appraisal Committee (EAC) and State or Union Territory Level Expert Appraisal Committee (SEAC) to be constituted for the purpose of the notification.
- A complete procedure providing for the application process and stages like screening, scoping, public consultation and appraisal, for obtaining prior environmental clearance was provided in the EIA Notification.
- The EIA Notification limited the validity of environmental clearances to five years for all projects and activities except mining and river valley projects.
- Upon obtaining environment clearance, the project proponent was required to prominently advertise the same in newspapers along with details of the MoEF website where it is displayed and the MoEF / SEIAA, as the case may be, were also required to place the environmental clearance in public domain on the Government portal.
- The EIA Notification also provided for post environmental clearance monitoring by submission of compliance reports, to be displayed on the
website of the concerned regulatory authority as also to be made available to the public upon demand.

- General Conditions were stipulated to the Schedule whereby any project or activity specified in Category “B” will be treated as Category “A” and assessed by the Central Government through the MoEF, if located in whole or in part within 10 km from the boundary of (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries.

The EIA Notification has been amended several times in the last few years to water down the protections and procedures under it, by *inter alia* delegating powers to the SEIAA, creating exceptions for the requirement of environmental clearance and allowing for procedural relaxations. In most of these cases, the amendments were introduced completely undermining democratic process and public participation, by dispensing with notice in the name of “*public interest*” thereby avoiding public scrutiny.

By effect of these amendments there have been drastic dilutions in the environmental governance, including -

1. Removal of the requirement for environmental clearance for several high impact projects and activities
2. Removal of the requirement for public consultation for several high impact projects and activities
3. Increasing the period of validity of the environmental clearance and relaxing the renewal process, inspite of the technological advancements in construction and the increasing environmental concerns
4. Reduction / removal of the protections granted in respect of eco-sensitive zones, sanctuaries etc. to allow projects in the vicinity of such areas without environmental safeguards
5. Allowing unrestricted mining by reducing threshold limits of projects falling within the purview of environmental law
6. Regularizing unauthorized projects that were proceeded without environmental clearance, by allowing post facto environmental clearances
7. Increasingly delegating powers of the MoEF and SEIAA to the district authorities established by way of the amendments, and to local authorities, thereby opening doors for influence and corruption in the obtaining of environmental clearances

The details of some of these amendments are provided in Annexure I to the report.

**COASTAL REGULATION ZONE NOTIFICATION, 2011 (CRZ NOTIFICATION 2011)**

CRZ Notification was issued on 6 January, 2011 in supersession of the earlier notification dated 19 February 1991, with a view to ensure livelihood security to
the fisher communities and other local communities living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote sustainable development based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming. The CRZ Notification classifies and declares the coastal stretches and water area up to its territorial limits and restricts the setting up and expansion of any industry, operations or processes and manufacture or handling or storage or disposal of hazardous substances in the CRZ area. The CRZ Notification includes water area up to 12 nautical miles in the sea and water area of a tidal body such as creek, river, estuaries etc. It notifies no-development zones and prohibits construction activities detrimental to the marine environment. Activities permissible under the CRZ Notification are subject to environmental clearance. Several amendments have been made to dilute the CRZ Notification 2011, most without issuing notice to the public and hence, having escaped public scrutiny.

1. Relaxations have been made for beach resorts or hotels in prohibited CRZ areas.
2. FSI restrictions were relaxed in the prohibited CRZ areas to allow for construction
3. Memorials / Monuments and allied facilities, including in the middle of the sea, were permitted, thereby allowing for projects such as Shivaji Memorial in the Arabian Sea in Mumbai city.
4. Roads have been allowed to be constructed in the prohibited CRZ areas, even if such road passes through mangroves, thereby allowing projects such as the Coastal Road in Mumbai city.
5. Period of validity of clearances increased

**COASTAL REGULATION ZONE NOTIFICATION, 2018**

Meanwhile the government has passed the CRZ Notification, 2018, thereby completely overhauling the coastal protection laws. Public Notice dated 18th April 2018 was issued seeking comments/suggestions on Draft Coastal Regulation Zone Notification, 2018, however the draft was notified in December 2018, without addressing the objections raised by civil society. The notification is more a guideline to facilitate construction projects and destructive development than protect the environment. It opens up more areas which are originally part of CRZ, for development and new townships, making the coast more vulnerable to development. It has loosened the boundaries of CRZ, which will now be between the High Tide Line to 50 meters (or width of the creek, whichever is less) instead of the earlier 100 meters. Even the non-development zone for CRZ III A has been relaxed from 200 meters to 50 meters. The notification is being heavily criticized.
The Compensatory Afforestation Fund Act 2016 allows for violations of the rights of adivasis by way of compensatory plantations. The funds collected as compensation is allocated to forest departments to set up plantations to replace the lost forests due to felling of trees by industries, miners, corporations who require forest land for their projects. No provision is made for obtaining consent from the village councils of adivasis and other forest dwellers before carrying out plantations on their traditional forest lands, thereby diluting the protection granted under the Forest Rights Act, 2006. This allocation of the funds will empower the forest department, to exert control and power over the traditional forests and adivasis, who have been in any case voicing their grievances and protests in respect of the Forest Rights Act, 2006.

The recently notified draft Compensatory Afforestation Fund Rules, 2018 go further in violation of the Forest Rights Act, 2006 and in potentially permitting atrocities against adivasis and forest dwellers. The draft rules permit activities increasing forest productivity as against protection and restoration of forest cover, being the traditional habitat and means of livelihood of the adivasis and forest dwellers.

Draft National Forest Policy, 2018

Vide Office Memorandum dated 14th March 2018, stakeholders were invited to submit objections to the Draft National Forest Policy, 2018 by 14th April 2018. The draft policy has been criticized for restricting participation of communities that live in forests or are highly dependent on it for their resources in the management of forests. In this aspect it dilutes participatory process already granted under the laws in existence like Forests Rights Act, 2006 read with the old policy of 1988. The draft policy focuses on forest productivity more than ecological balance, and industrial forestry over farm forestry and seeks to open up the forest areas for privatization and commercialization. The draft policy also does not clearly define what constitutes a forest for the purpose of the draft policy.

Proposed Indian Forest Act, 2019

Meanwhile, the government has introduced the draft Indian Forest Act, 2019 to replace the colonial era Indian Forest Act, 1927. This new Bill is far more draconian than the earlier Act, by not only retaining the policing and quasi-judicial powers to forest officials under the old Act, but strengthening them far more with powers to use fire-arms with exceptional levels of immunity from prosecution. The Bill intends to take away rights granted to Adivasis under the Forest Rights Act, 2006, and provides powers to forest officials to extinguish these rights altogether. The
Bill also proposes to create a new class of forests called ‘production forests’ and opens up the forests to non-state entities for exploitation.

**NATIONAL WATERWAYS ACT, 2016**

In March 2016 this Act was passed. The declared purpose was to facilitate river water transport and navigation. Inland waterways are part of all three lists in Seventh Schedule of the Constitution. Ordinarily it is the State’s power to develop inland waterways. Entry 24 of List 1 (i.e. list dealing with powers only of the Central Government) gives the Central Government power related to “Shipping and navigation on inland waterways declared by Parliament by law to be national waterways”. Parliament by law has to explicitly declare as “national waterway” pursuant to which the Central Government can take charge of its development and regulation. Since 1986, 5 such waterways had been declared “national.” These were Allahabad to Haldia stretch of Bhagirathi-Hooghly, another one along the Brahmaputra, and three others over the next few years. Hardly any development has taken place in respect of these waterways.

What the present law does is to declare 111 stretches of rivers as “national waterways” giving Central Government the power to develop and regulate them. A large number of complaints have been made against this not just by Parliamentarians but also by State Governments and those working on various social issues.

Water transport requires constant and steady water flow with continuous adequate depth. This requires major dredging, diversion of water, building jetties, construction of barrages, gates, bridges, etc. Thus, financial costs are huge. Besides, the diversion of water will have major impact on irrigation, dredging would lead to sea water ingress- affecting drinking water schemes, besides fish breeding will be impacted and even otherwise large number of fisherfolk would be affected due to presence of big barges and vessels. Also, at those places where waterways exist there are major pollution complaints because of transport of coal, etc. The transport cost is also likely to be high because the transport will be one way and there are no guarantees that there will be a two-way transport. Many of the existing dams, bridges, etc. will have to be rebuilt or demolished.

Apart from the huge financial cost there has been no technical, economic, social or ecological study made before declaring these 111 waterways as national waterways. This law appears to be one more fancy scheme of the Government which is likely to lead to manifold disasters.
**OTHER POLICY AND LEGISLATIVE CHANGES**

Apart from the above, some of the other legislative and policy changes made by the Government of India or planned to be made that are regressive, and/or violate Constitutional values, and ethos are listed below. This is only an illustrative list.

1. **Citizenship Amendment Bill, 2016**: This bill grants citizenships to immigrants based on their religion and excludes certain religious classes from its scope such as Muslims and Christians. The classification is clearly violative of Articles 14 and 15. Although, the bill is yet to be passed and has been facing tremendous opposition, the NDA Government has taken all steps required to prepare for the bill. While updating the National Register of Citizens (NRC) in Assam, which led to the release of the Draft Part NRC in 2017 and Draft updated NRC in 2018, names of several people belonging to the minority communities were left out of the register. During the campaigning for the General Elections 2019, the ruling party has reinforced its position to pass the Citizenship (Amendment) Bill and root out ‘infiltrators’, except for those belonging to the Hindu, Sikh and Buddhist communities, thereby exposing the communal agenda of the ruling party. The Bill is therefore highly discriminatory and a threat to communal peace.

2. **Maternity Benefit (Amendment) Act, 2017**: Even though this act increases the maternity benefit to 26 weeks, the same is made applicable for woman who have up to two children only. Therefore, from the third child onwards, the maternity benefit continues to be reduced to 12 weeks. No obvious rationale is provided for this classification. Also, no amendment has been brought about to cover women in the unorganized sector, which suffer from exploitative practices of employers and do not receive paid leaves.

3. **Pradhan Mantri Matritva Vandana Yojana (PMMVY)** – The previous maternal health benefit policy, Indira Gandhi Matritva Sahyog Yojna (IGMSY) stands replaced with the PMMVY. Under the IGMSY women got Rs.6,000 towards expenses relating to child birth for the first 2 live births. This has now been reduced to Rs.5,000 for just the first live birth under PMMVY.

4. **Prohibition on selling cattle for non-agricultural purposes**: On 23 May 2017 the Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules were notified which prohibited sale of cattle in an agriculture market for slaughter. This was obviously done in furtherance of the ideological project of Hindutva and to appease a certain section of voters. However, there was tremendous protest against this move and the Supreme Court came down heavily on the rules. Finally, the Central Government notified the Prevention of Cruelty to Animals in Animal Market Rules, 2018 which supersede the earlier rules and exclude the clause concerning sale of cattle for slaughter.
5. **The Apprentices (Amendment) Act, 2014:** The Act states that the weekly and daily hours of work and leave entitlements of an apprentice shall be as prescribed by Rules. It also states that the hours of work and leave will be as per the discretion or policy of the employer. This discretion has left a lot of scope for employers to exploit the apprentices and impose onerous conditions.

6. **The Code on Wages, 2017:** The Code, which is yet to be passed consolidates: The Payment of Wages Act, 1936; The Minimum Wages Act 1948; The Payment of Bonus Act 1965; and The Equal Remuneration Act, 1976. While the code states that no State wage can be lower than the minimum wage set by the Central government, there is ambiguity as to how this minimum wage should be arrived at. Further, a problematic provision is with regards to the time frame of revision of wages. Under, the preceding Minimum Wages Act, 1936 State governments had flexibility in revising minimum wage, with a maximum un-revised period of five years. However, the Amendment provides for revision every 5 years, removing this flexibility. While equal remuneration for genders is guaranteed under the Code it does not provide for gender equality at the stage of recruitment and for other conditions of service, thus diluting the Equal Remuneration Act. Moreover, the Code allows different minimum wages for different states or regions thereby making mockery of national minimum wages. By an earlier formula which had been agreed by the Central Government the minimum wages should be Rs. 18,000/- p.m., the minimum wages which are given to the Central Government employees. But this has been discarded. The Code also treats workers participating in strike as absent without looking at the justification. The Code also does away with the right of trade unions to access audits of the establishments accounts thereby affecting collective bargaining.

7. **The Factories (Amendment) Bill, 2016:** Currently, pending before the Lok Sabha, the Bill proposes amendments to the maximum hours of overtime allowed per quarter for example - in times where factories have higher workload, the overtime may be increased by the State or Central government to 115 hours/quarter, from the earlier prescribed limit of 75 hours. This is bound to cause exploitation on grounds of higher or special workload.

8. **The Mines and Mineral (Development and Regulation) Amendment Act, 2015:** Under the Act prior to the Amendment, no mining lease could be provided for an area larger than 10 sq. km., however for a mineral, the central government may provide multiple licenses or leases. The Amendment allows the Central Government to increase the area limits for mining, thereby granting unhinged power to the Central Government to issue licenses of mining for larger areas, with no prescribed maximum limit.
9. **The National Bank for Agriculture and Rural Development (Amendment) Act, 2017**: Prior to this amendment, the central government and RBI jointly held at least 51% of the control in National Bank for Agriculture and Rural Development (NABARD). However, vide this amendment, this 51% being the controlling stake in the bank, was transferred to the Central Government alone, putting the bank under complete control of the Central Government.

10. **The Payment of Wages (Amendment) Act, 2017**: The 2017 Amendment to the 1936 Act removes the provision under which the employer had to obtain written authorization from their employees for the payment of wages through a cheque or remitting it to their bank accounts. In a rural setting, and one with inadequate access to convenient banking networks this may pose to be problematic, especially for people coming from lower socio-economic backgrounds.

11. **The Specific Relief (Amendment) Act, 2018**: One of the most problematic provisions of this Amendment concerns injunctions. This provision prohibits civil courts from granting injunctions in contracts related to infrastructural projects, if such injunction would, “cause impediment or delay in the progress or completion of such infrastructure project.” The Central Government has retained the liberty of amending what the list of infrastructural projects is, and it currently includes transport, energy, water and sanitation, communication (such as telecommunication), & social and commercial infrastructure (such as affordable housing)

12. **Proposed deletion of Article 370 and 35A of the Indian Constitution**: This provision of immense and historical significance, which was provided in the Indian Constitution to recognize the rights given to Kashmiris at the time of accession of Kashmir to India, is sought to be taken away unilaterally by the current government by way of this proposed amendment.
CONCLUSION

The present report is not intended to be exhaustive or cover all legislations and policy dilutions, which have led to the dismantling of rights under the current regime. There are many other legislations, rules, notifications either passed or pending which adversely affect the people.

While the claims of the present government have been that they have put in place policies to improve the socio-economic situation of the country and towards welfare of the people, the Report seeks to reveal that their actions are entirely to the contrary. There have been substantial and unprecedented adverse changes, which have been made or are in the pipeline, on various issues such as environment, welfare of women, taxation, land acquisition etc. However, the most dangerous trend that is visible, is the attempt to totally dismantle and crush all institutions of accountability in the country, which are crucial to any functioning democracy. From the time of coming into power, the current regime has used a multipronged approach to execute its ideological project. Most policy changes brought about are completely partisan, communally motivated, promote unsustainable and destructive development, and unfettered destruction of natural resources by the corporates. The dilutions also subvert the democratic processes and affirmative rights which have been put in place after decades of struggle by civil society. This report also highlights that India is witnessing a constant attack on the independence of its various agencies and institutions such as the information commission, the judiciary, the quasi-judicial tribunals and Lokayukt from executive political interference. The acute shortage of judges at all levels of the judiciary is constantly an issue of political tussle, but little is being done to resolve it.

It is hoped that the report serves as an important information tool in the hands of the general public and that they are able to objectively analyze the destructive policies of the current regime, demand accountability and reversal of these dangerous policy changes that threaten our secular socialist democratic foundation and constitutional values.
ANNEXURE I

Some critical Amendments to the EIA Notification, 2006

1. S.O. 1599 (E) dated 25th June 2014 – This Notification brought about several amendments/dilutions to the scope of application of the provisions of the EIA Notification to several activities and projects in the Schedule to the Notification, including but not limited to, hotly contested government, energy, industrial and construction activities like River Valley and Irrigation projects, Thermal Power plants, Mineral Beneficiation projects, Chemical fertilizer industries, Pulp and paper industries, Highway projects and Building Construction Projects. Irrigation projects below 2000 ha command area were exempted from the requirement of environmental clearance. The threshold limits were also modified. Exemption was created for certain type of projects in the Chemical fertilizer industries and Pulp and paper industry. One major dilution made by way of this notification was in the General Condition to the Schedule, by reducing the boundary line from 10 km to 5 km from protected areas listed above for all projects except the projects specified in the amendment and also providing for complete exemption of the condition in case of inter-state governments by agreement between the respective States and Union Territories.

2. S.O. 2601 (E), dated 7th October 2014 – While mineral prospecting was completely exempted from purview of the EIA Notification, the application of General Condition was exempted for projects or activities less than 5 ha of mining lease area. Further no fresh environmental clearance was required for mining projects at the time of renewal of mining lease.

3. S.O. 3252 (E) dated 22nd December 2014 - Very grave and impactful dilutions were made to the requirements of prior environmental clearance for building and construction projects under 8 (a) of the Schedule and Townships and Area Development Projects under 8 (b) of the Schedule. First and foremost, the application of General Conditions of the Schedule to these two categories of projects / activities was completely removed. Secondly, the definition of “built up area” for the purpose of building construction projects was limited to built up or covered area and open to sky activity areas were completely excluded from its definition, in an attempt to exclude several urbanization projects, such as the Statue of Unity project, from the purview of the notification. Further, projects and activities such as industrial sheds, schools, colleges, hostels for educational institutions were completely excluded from scrutiny, irrespective of its impact or expanse, at a strategic time of increasing privatization and corporate investment in education. Vide an Office Memorandum dated 5th March 2015, the word “industrial shed” so excluded, was clarified to imply building (whether RCC or otherwise) used for housing plant and machinery of industrial units and Godowns and buildings connected with production related and other associated activities of the unit in the same premise. This drastically reduced the area, thereby allowing such projects to escape scrutiny under the notification.

4. S.O. 382 (E) dated 3rd February 2015 – The requirement of Scoping was exempted for all new National and State Highway projects in border states and expansion of existing National and State Highway projects. All linear projects such as Highways,
pipelines etc. in border states were exempted from public consultation altogether. This is wrongly being used in the case of high impact so-called linear projects like the Bullet Train, to completely escape the environmental scrutiny process and requirement for environmental clearance under the notification.

5. S.O. 1141 (E) dated 29th April 2015 – The Validity of Environmental Clearance was increased from 5 years to 7 years in the case of all projects and activities other than River Valley projects for which validity is 10 years, with a further provision to allow renewal for an additional period of 7 years on application to the regulatory authority. Provision for condonation of delay up to three months from expiry of validity of the environmental clearance was also made. As a result of this amendment, the validity of environmental clearances can be increased for up to 14 years, when they ought to have been reduced from the original 5-year period in light of the technological advances which have provided faster means of construction and the challenges on account of a rapidly deteriorating and changing environment and landscape requiring constant monitoring and fresh assessment.

6. S.O. 811 (E) dated 23rd March 2015 – The provision relating to transferability of environmental clearance was amended to create an exemption from the requirement of no objection from either holder of environmental clearance or regulatory authority.

7. S.O. 996 (E) dated 10th April 2015 – The requirement of Scoping was exempted for all building and construction projects.

8. S.O. 141 (E) dated 15th January 2016 – A major amendment to the EIA Notification was made by introducing District Environment Impact Assessment Authority (DEIAA) as regulatory authority for matters falling under category “B2” for mining of minor minerals in the Schedule to the EIA Notification and also constituting District Expert Appraisal Committee, thereby further delegating powers. Application of General Conditions was also exempted for project or activity of mining of minor minerals of Category “B2” up to 25 ha of mining lease area, thereby relaxing it further from the earlier 5 ha area, and River bed mining projects on account of interstate boundary were entirely exempted.

9. S.O. 648 (E) dated 3rd March 2016 – Environmental consultant organizations accredited by the government were given authority to prepare and present Environment Impact Assessment (EIA) Report and Environment Management Plan (EMP) of a project / activity. The amendment also provided for empanelment of national level ‘reputed’ educational and research institutions as environmental consultant organizations, thereby closing the distance between project proponents and the regulatory authority and increasing possibility of exercise of influence and corruption through accredited environmental consultant organizations.

10. S.O. 3999 (E) dated 9th December, 2016 – Under the claim of ensuring Ease of Doing Business and streamlining permissions for buildings and construction sector, a completely new set of objectives and monitorable environmental conditions were introduced to integrate environmental conditions in building bye-laws, thereby taking away the role of SEIAA and MoEF in granting environmental clearances for building construction projects and authorizing the local authorities like Development Corporations, Municipal Corporations to certify compliance of environmental conditions prior to issuance of Completion Certificate. Following this vide order dated 12th June 2017 issued by the MoEF concerning Delhi area, the Authority Competent was authorized to grant building permission with
integrated environmental clearance conditions for building and construction projects up to 1,50,000 sq.m. This is bound to increase corruption in an already corrupt process of grant of building permissions and heavily compromises environmental safeguards, in increasing urbanized and polluted cities such as Delhi.

11. S.O. 804 (E) dated 14th March 2017 – A procedure was put in place for post-facto environmental clearance to regularize violating projects and activities, which had started work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance. All such violating projects whether Category “A” or “B” were required to be appraised by the Expert Appraisal Committee and clearance granted by the Central government. The projects / activities were given six months’ time to avail of the procedure for regularization under this notification i.e. until 13th September 2017. This notification is completely contrary to the objects, intent and provisions of the EIA Notification which does not provide for post-facto environmental clearance, and has been done to defeat the orders passed by the National Green Tribunal, 2010 in some cases quashing and setting aside earlier attempts of the government to regularize violating projects who had not obtained prior environmental clearance.

12. S.O. 1030 (E) dated 8th March 2018 – The above Notification bearing no. S.O. 804 (E) dated 14th March 2017 was substantially amended by way of the 2017 notification to allow for further application of the provisions of the notification allowing for regularization which were available only up to 13th September 2017 under the 2017 notification, and without setting any time limit. It also provided for dilution of the 2017 notification, by delegating and allowing SEAC to appraise and SEIAA to grant clearance in case of violating Category “B” projects which had not obtained prior environmental clearance under the EIA Notification. Pursuant to the same, the MoEF issued an Office Memorandum dated 15th March 2018 in order to operationalize this amendment by providing that the proposals received on the Ministry’s portal up to 13th September, 2017 i.e. within 6 months from and under the earlier 2017 notification, will be considered by the EAC/MoEF or SEAC/SEIAA. However, the Category “B” projects received on the Ministry’s portal up to 13th September 2017 but not considered by EAC in the Ministry, shall be transferred online to the SEAC/SEIAA.

13. Several dilutions have also been made by issuance of Office Memorandums from time to time. For instance –

- Coal mining projects that require a one-time capacity expansion with the production capacity exceeding 16 MTPA have been exempted from any public consultation (Office Memorandum dated 28 July 2014). A clarification (Office Memorandum dated 2 September 2014) issued applies this exemption to coal mining projects with production capacity exceeding 20 MTPA, provided ceiling of the expansion towards mining for an additional production up to 6 MTPA and also if the transportation of coal proposed is by means of a conveyor or rails. However in both these instances, the EAC has to apply “due diligence” and it needs to be subject to “satisfactory compliance with environmental clearance(s) issued in the past as judged by the EAC”, leaving it entirely to the discretion and wisdom of the EAC and thereby rendering useless these protections.
- An Office Memorandum dated 7th October 2014 was issued restricting the powers of appraisal at the scoping stage.
- An Office Memorandum dated 29th August 2017 extended the validity of
Terms of Reference (TOR) for projects/activities (except for Valley and Hydroelectric power projects) for submission of EIA / EMP reports to three years and for River Valley and HEP projects to four years, and also authorized the regulatory authority to further extend this validity by an additional one year without referring proposal to EAC/SEAC concerned.

- An Office Memorandum dated 13th February 2018 classified small units manufacturing Linear Alkyl Benzene Sulphonic Acid (LABSA) as Category "B2" projects, thereby exempting such projects from public consultation process altogether.

- By way of an Office Memorandum dated 27th February 2018, it was clarified that the process of melting of coal tar pitch since it involves only change of state, would not attract provisions of EIA Notification.

- An Office Memorandum dated 27th April 2018 has been issued by the MoEF exempting Public Consultation for the projects / activities located within the Industrial Estates / Parks. This exemption was provided to projects / activities located in Industrial Estates / Parks notified prior to coming into force of the EIA Notification and also those Industrial Estates / Parks which have obtained prior environmental clearance under the EIA Notification. In addition, the exemption was extended to projects / activities which were granted TOR prior to environmental clearances to such Industrial Estates / Parks, subject to validity of such TOR. It is pertinent to note that similar cryptic Office Memorandums issued to exempt projects / activities located in Industrial Estates / Parks from obtaining environment clearance or to regularize their operations without environmental clearance have been set aside by the National Green Tribunal in the past, however the government appears to be making yet another attempt to clear some industries/projects by issuing these Office Memorandums in the name of clarifications, in spite of the provisions of the EIA Notification being quite clear on this aspect.
**ANNEXURE II**

_Some critical Amendments to the CRZ Notification, 2011_

1. S.O. 383 (E) dated 4th February 2015 – The guidelines under Annexure III of the CRZ Notification were relaxed for development of beach resorts or hotels in the CRZ-II area by doing away with the application of several restrictions such as the prohibition from construction within 200 meters in the landward side of High Tide Line and within the area between Low Tide Line and High Tide Line and allowing proposed constructions only beyond the hazard line or 200 mts from the High Tide Line, whichever is more. Apart from this, the inclusion of no development zone in calculation of FSI, limit of 0.33 FSI and several other building and construction parameters were relaxed, and environmental safeguards done away with.

2. S.O. 556 (E) dated 17th February 2015 – By this Notification the CRZ Notification came to be amended to allow for construction of memorials/monuments and allied facilities in CRZ-IV (A) areas by the concerned State Government. Quite coincidentally this amendment was issued during the pendency of a proposal for construction for the Shivaji Memorial/statue in the Arabian Sea Mumbai, Maharashtra, where the EAC noting that construction of the Statue was prohibited under the CRZ Notification (prior to this amendment), recommended the amendment of the CRZ Notification itself to facilitate the project. The environmental clearance for this project was granted on 23rd February 2015, less than a week after the issuance of this amendment notification.

3. S.O. 3552 (E) dated 30th December 2015 – Roads on reclaimed surface were allowed to be constructed in CRZ I area, even in case such road passed through mangroves or was likely to damage mangroves, subject to three times the number of mangroves destroyed or cut during construction process being replanted. This notification also coincided with another project for construction of a Coastal Road in Mumbai, in a possible attempt to remove restrictions to this project.

4. S.O. 1002 (E) dated 6th March 2018 – CRZ Notification was amended to extend validity of clearance under CRZ to 7 years and for consideration of post facto clearance and regularization of violating projects on requests received up to 30th June 2018, completely contrary to the requirement of prior environmental clearance under the EIA Notification read with the CRZ Notification. Completely undermining democratic process and public participation, this notification was issued by dispensing with notice in the name of “public interest” thereby completely avoiding public scrutiny.

5. S.O. 3197 (E) dated 2nd July 2018 - In a drastic amendment to the CRZ Notification substantial area was removed from the protected CRZ area under the notification and the scientific method of accurate hazard mapping was discarded.
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