



“Building Citizenship...Demanding Accountability”

Important Parliamentary Decisions That Demand Our Attention

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National Centre for Advocacy Studies (NCAS)
Serenity Complex,
Ramnagar Colony,
Pashan Road,
Pune, Maharashtra 411021



Important Parliamentary Decisions that Demand Our Attention

Some important bills passed recently

- ✚ **The Right to Information (Amendment) Act, 2019**
- ✚ **The Muslim Women (Protection of Rights on Marriage) Act, 2019**
- ✚ **The Protection of Children from Sexual Offences (Amendment) Act, 2019**
- ✚ **Unlawful Activities (Prevention) Amendment Act 2019**
- ✚ **National Investigation Agency (Amendment) Act 2019**
- ✚ **The Jammu and Kashmir Reorganisation Act 2019**
- ✚ **The Surrogacy (Regulation) Bill, 2019**
- ✚ **The Protection of Human Rights (Amendment) Act, 2019**
- ✚ **Special Economic Zones (Amendment) Act, 2019**

There are reportsⁱ about the 1st session of the 17th Lok Sabha session being the most productive in 20 years, thanks to the number of bills passed in both the houses combined. Sources from the Rajya Sabha have quoted, “The House has been passing Bills with extraordinary swiftness, and there have been days when more than one Bill was passed.” Parliamentary Affairs Minister Pralhad Joshi also stated, “We want to pass all the Bills. I hope by the end of this session... a new history in the passage of Bills and total working hours will be created.” PRS Legislative Research conducted an analysis which stated that the Lower House registered a productivity of 128 per cent between June 17 and July 16, which is way higher usual numbers.

However, this swift affair raises many pertinent questions, especially on the role of the parliamentary committees who are supposed to scrutinize the bills and hold government accountable for its actions. Many people have rightly raised concerns over this ‘rush’ to pass all the bills. They claim that Parliament’s responsibility goes beyond working for long hours and passing most number of bills. Focus should also be on in-depth scrutiny of important legislative issues. While the 1st session was eventually swept away with discussions and debates on the change in Jammu & Kashmir’s special status, there were many other controversial decisions that took place in the session. It was evident that the government was planning to set some affairs

straight when they announced a 30-day session of the Lok Sabha. In addition to passing the budget, the government's agenda for the session was to get Parliament's approval on 40 bills all put together. Experts have pointed out that, out of the 28 bills which were passed by Parliament in the 1st session, only five of them were previously examined by a parliamentary committee. The rest of the bills were passed by simply debating them for approximately three and a half hours each, on the floor of the House. The Lok Sabha set a record by passing 33 bills, which is the highest number passed in a single session since 1952.ⁱⁱ

An article on PRS Legislative Research rightly points out two key aspects of this 1st session. Usually, bills in the parliament are passed by a voice vote, unless recording of votes is constitutionally required. The 1st session witnessed a trend where MPs called for recorded voting on many controversial bills, like Triple Talaq, J&K Reorganisation and amendments to the RTI Act. This meant that the political parties had to publicly declare their stand on these issues. Out of the 33 bills passed, recorded voting was asked for seven bills (or 21 percent), which was significantly higher than the share in the previous Lok Sabha.

At this point, it becomes important to understand the process of Parliamentary Committees, which are meant to ensure that decisions are not made or acted upon without scrutiny. As this articleⁱⁱⁱ eloquently explains, the Parliament broadly has two forums for discussion. One is on the floor of the House i.e. what we see on television. The other is the closed-door forum of parliamentary committees, made up of MPs either from one or both Houses. Their meetings are not televised and the record of the meetings does not reflect the position taken by an individual MP. The debates in the committees usually require over a few months of meaningful deliberations. The idea is to ensure that there are special forums for deliberation on national policy issues, not constrained by the limited number of sitting days of Parliament. At its core, the committees demand accountability on the part of the government.

Merits of any legislation depend on a number of factors. These include the drafting, possible challenges and consequences for and after implementing the provisions and so on. There are some fundamental ideas behind the formation of the parliamentary Committees:^{iv}

- Strengthen Parliament by increasing its scrutiny of government
- Invite subject matter experts and public feedback to be able to contribute to the deliberations in Parliament
- Provide a year-round forum for debate and deliberation.

Failure to refer the bills to committees effectively means missing on important steps of scrutiny which may eventually lead to implementation challenges and impact the purpose of the law itself. Parliamentary committees are central to legislative processes and strengthening them will ensure effective and robust lawmaking processes. Keeping all these things in mind, we thought it was important to understand some of the recent parliamentary decisions. Here is a detailed analysis of some important bills and amendments made in the 1st session of the 17th Lok Sabha.

✚ The Right to Information (Amendment) Act, 2019 (“RTI Amendment Act”)

The RTI Amendment which seeks to amend the Right to Information Act, 2005 (“RTI Act”) was passed in Lok Sabha on Jul 22, 2019 and subsequently passed in Rajya Sabha on Jul 25, 2019.

What are the salient amendments?

The RTI Amendment seeks to empower the Central government to make rules to decide the tenure, salary, allowances and other terms of service of Information Commissioners of the Central Information Commission and also of State Information Commissions.^v Earlier, salary and term of the Central Information Commission and State Information Commission was equivalent to the salary of Election Commission of India and State Election Commission respectively. Central information commission and State information commission is statutory body and the term and salary of the same commission is equivalent to constitutional body of election commission.

Here’s what we must know

The government’s motive behind bringing the amendment is that the Central Information Commission is a statutory body and Election Commission is a Constitutional body. Therefore, the mandate of Election Commission of India and Central and State Information Commissions are different and needed to be determined accordingly.^{vi} Major concerns regarding the amendment include removal of the provision and status of CIC and IC to hold office for a term of years, the authority for which now lies with the central government. So there are questions being asked about the independence and smooth functioning of the Information Commission. Many are calling this move a ‘complete dilution’ of the structural mechanisms, as it was passed hurriedly without any public consultation^{vii}.

✚ The Muslim Women (Protection of Rights on Marriage) Act, 2019

The government believes that in spite of the Supreme Court setting aside *talaq-e-biddat*, it has not worked in bringing down divorce in Muslims. The government thus felt that there was a need for State action to give effect to the order of the Supreme Court¹ and to redress the grievances of victims of this type of illegal divorce. Keeping this in mind, Muslim Women (Protection of Rights on Marriage) Bill was introduced in 2017, and passed by the Lok Sabha. It marked all declaration of *talaq-e-biddat* or any other similar form of *talaq* pronounced by a Muslim man resulting in instant and irrevocable divorce, including in written or electronic form, to be void and illegal.

¹ The Supreme Court in the matter of Shayara Bano Vs. union of India and others and other connected matters, on the 22nd August, 2017, in a majority judgment of 3:2, set aside the practice of *talaq-e-biddat* (three pronouncements of *talaq*, at one and the same time) practiced by certain Muslim husbands to divorce their wives.

But the bill was pending for consideration in Rajya Sabha. At the same time, the practice of divorce by triple talaq was continuing, and thus the government felt there was an urgent need to take immediate action by making stringent provisions in the law. With this in mind, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 was promulgated in September 2018. In order to replace the ordinance, the Muslim Women (Protection of Rights on Marriage) Bill, 2018 was introduced in Lok Sabha in December 2018 and passed in the Lok Sabha. But it remained pending for consideration in the Rajya Sabha and both Houses were adjourned. To give continued effect to the provisions of the ordinance, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 was promulgated in January, 2019.

Further, the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019 was promulgated in February, 2019. Thereafter, the Sixteenth Lok Sabha was dissolved in May 2019, and the bill lapsed.

Accordingly, to replace the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019, the Muslim Women (Protection of Rights on Marriage) Bill, 2019 got introduced in the Parliament with the view that the legislation would help in ensuring the larger Constitutional goals of gender justice and gender equality of married Muslim women and help subserve their fundamental rights of non-discrimination and empowerment. So in June 2019, the Muslim Women (Protection of Rights on Marriage) Bill, 2019 was introduced in Lok Sabha replacing the ordinance circulated earlier.

What are the salient amendments?

The Bill makes declaration of talaq a cognizable offence if information relating to the offence is given by the married woman (against whom talaq has been declared) or any person related to her by blood or marriage. This offence will attract up to three years' imprisonment with a fine for the husband pronouncing divorce. Further, the accused can be granted bail only after hearing the woman (against whom talaq has been pronounced). The Bill makes the Muslim woman entitled to seek subsistence allowance from her husband for herself and for her dependent children. She is also entitled to seek custody of her minor children.

Here's what we must know

The government and supporters of the bill are hailing it as a victory for gender justice. But does the law really provide justice for Muslim women? We need to introspect what the bill actually says and provides the woman as 'justice'. It is a known fact that many Muslim women have struggled for years to change the discriminatory laws governing their lives. Some are of the opinion that the Muslim women, who were fighting against this, were doing it with a holistic approach and opposing all forms of discriminatory practices like talaq, polygamy, halala, and so on. Their demand for gender justice was sensitive and more comprehensive. Does the current law ensure that Muslim women are brought into the gamut of gender just laws? This form of divorce was already termed unconstitutional by the SC in 2017 in one of its judgment. So with this legislation, was there really a need for including unwarranted criminal provisions in the Bill? It must be noted that this is the first time that criminal provisions are included in matters relating to

marriage and divorce. If the husband pronouncing triple talaq is put behind the bars, how will he provide money to his wife? The law does not make any provision for ensuring that, in absence of her husband, the in-laws or her family will take responsibility to provide her financial assistance.

Some believe that instead of a new law, the husband who uses triple talaq should actually be booked under the Protection of Women from Domestic Violence Act, a law that protects all women from cases of domestic violence. Keeping in mind the debates around Uniform Civil Code, it comes as a surprise that the government chose to opt for a Sharia based law to provide justice for Muslim women.

We cannot neglect the apprehension the Muslim community faces in the light of continuing lynching cases, talks about imposing the National Register of Citizens across the country and measures taken by the state to curb terrorism by allowing individuals to be labeled as terrorists. The community fears that the triple talaq law will actually be used to criminalize them further.

Another concern is the way in which the bill was passed, amid evident absence of the members who had opposed the bill earlier. It points towards not just negligence, but also lack of concern for the community. Many fear that the affected Muslim women will actually end up suffering more because of this decision.

The Protection of Children from Sexual Offences (Amendment) Act, 2019

The Protection of Children from Sexual Offences Act, 2011 (“POSCO”) was passed in Rajya Sabha and Lok Sabha in May 2012. POSCO was enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and connected matters. It penalized any person who commits offences such as sexual harassment, sexual assault, penetrative sexual assault and aggravated penetrative sexual assault. The penalty was rigorous imprisonment for up to five years and a fine. On subsequent convictions, the term of imprisonment was decided up to 7 years and fine. Any offence committed by a child would be dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2000.

What are the salient amendments?

In January 2019, The Protection of Children from Sexual Offences (Amendment) Act, 2019 (“Amendment Act”) was introduced in Lok Sabha. The Act defines certain actions as “aggravated penetrative sexual assault”. These include cases when a police officer, a member of the armed forces, or a public servant commits penetrative sexual assault on a child. It also covers cases where the offender is a relative of the child, or if the assault injures the sexual organs of the child or the child becomes pregnant, among others. With regards to “aggravated penetrative sexual assault”, which included cases when a police officer, a member of the armed forces, or a public servant commits penetrative sexual assault on a child, or cases where the

offender is a relative of the child, the bill adds two more grounds. These include: (i) assault resulting in the death of child, and (ii) assault committed during a natural calamity. The Bill increases the minimum punishment from ten years to 20 years, and the maximum punishment to death penalty.

POSCO Amendment adds two more offences to the definition of aggravated sexual assault. These include: (i) assault committed during a natural calamity, and (ii) administering any hormone or any chemical substance, to a child for the purpose of attaining early sexual maturity.

In addition, two other offences for storage of pornographic material involving children have been added which include: (i) failing to destroy, or delete, or report pornographic material involving a child, and (ii) transmitting, propagating, or administering such material except for the purpose of reporting it.

The Bill enhances the punishments for certain offences as

- Use of child for pornographic purposes from maximum 5 to minimum 5 years
- Use of child for pornographic purposes resulting in aggravated penetrative sexual assault from life imprisonment to minimum 20 years to life imprisonment or death
- Use of child for pornographic purposes resulting in sexual assault from minimum 5 years and maximum 8 years to minimum 3 years and maximum 5 years
- Use of child for pornographic purposes resulting in aggravated sexual assault from minimum 8 years and maximum 10 years to minimum 5 years and maximum 7 years

Here's what we must know

At its core, the Act attempts to protect children from offences of sexual assault, sexual harassment and pornography. The amendments have made provisions for enhancement of punishments for various offences to deter the perpetrators and ensure safety, security and dignified childhood for a child. It also empowers the Central Government to make rules for the manner of deleting or destroying or reporting about pornographic material.

However, there have been strong voices on the other side of the fence that suggest death penalty might not be the right step for achieving justice in society. Many believe that our criminal justice system is highly error prone and recent years have witnessed an exaggerated use of death sentences by trial courts, which should be a worrisome trend. Take the case of Madhya Pradesh government which recently embarked upon a plan to reward public prosecutors with incentives and evaluate their performance based on how many convictions and tough sentences they secure. Reports^{viii} state that prosecutors in Madhya Pradesh are awarded 100 to 200 points for maximum punishment at lower courts, 500 for a life sentence and 1,000 for obtaining a death sentence. Those who earn more than 200 points are given awards such as “Best Prosecutor of the Month” and “Pride of Prosecution”. Those who do not earn more than 500 points are issued a warning. Many believe that such schemes endanger the fabric of our nation and pose a serious challenge to the autonomy of prosecutors. This also pushes us to question the independence of the office of public prosecutors from governmental influence and interference. Such decisions cannot be taken without researching the misuse and abuse of

discretion which prosecutors enjoy by virtue of their powers under the code of criminal procedure.

Statistics also show that the number of death sentences awarded by trial courts went up to 162, the highest since 2000, as reported by 'Death Penalty in India: Annual Statistics Report 2018'. Further, in India we witness several cases of people spending years on death row, as the cases face trial delays and several other issues. There have been cases where people are wrongly framed and kept on death row for over 10 years and more. These developments need to be given consideration when we look at the decision to grant death penalty critically.

We also need to critically look at the term 'collective conscience'. The history of capital punishment jurisprudence in India shows that collective conscience is neither clear as a matter of legal thought nor easily ascertained as a matter of sociological reasoning. Many times, it serves the interests of an individual's judgment.

Further, multiple and varied notions of 'rarest of the rare' terminology exists among former judges. It is evident that there exists no uniform understanding of what exactly comes under the notion and this gave rise to serious concerns of judge-centric sentencing. One cannot do away with the fact that extreme personal subjectivity can play a key role in awarding someone with death penalty. Most offenders are between the age group of 18-20 and this usually happens in cases of elopement, so death penalty in such cases can create tradition of registering false cases.

✚ Unlawful Activities (Prevention) Amendment Act 2019 ("UAPA Amendment")

The Unlawful Activities (Prevention) Act ("UAPA") was enacted in 1967 to provide effective means to prevent certain unlawful activities of individual or associations and also for dealing with terrorist activities in a stringent manner. UAPA has previously been amended in the years 2004, 2008 and 2013. UAPA Amendment was passed in Lok Sabha on 24th July, 2019 and subsequently passed in Rajya Sabha on 2nd August 2019.

What are the salient amendments?

- (i) The new bill specifies that the central government has the authority to deem any organisation or individual as a terrorist organisation or terrorist respectively, if it; commits or participates in acts of terrorism, prepares for terrorism, promotes terrorism or involved in terrorism. The amendment dilutes the definition of terrorism by inserting the words 'individual' along with 'an organization'. It substitutes 'a terrorist organisation' with 'a terrorist organisation or individual'.
- (ii) It also empowers the Director General of National Investigation Agency to grant approval of seizure or attachment of property that may be connected with terrorism. The UAPA amendment empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases.

Additionally, the investigation of cases may be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above.

Here's what we must know

For the public imagination, the UAPA Amendment is being portrayed as a positive move to deal with terrorism and other unlawful activities. But the law is problematic at various levels. Firstly, in the law, since its inception, power was highly concentrated with the centre and the amendment further aids to this concentration of power. In principle, it goes against the law of natural justice. The law deems an 'individual' as terrorist, the question of whether he/she is actually a terrorist is secondary. Though there are provisions for the individual to prove his/her innocence by appealing to various committees under the law once declared as a terrorist. An individual may experience social taboo and political consequences. Secondly, the definition of 'unlawful activities' could be interpreted in different ways. The law prescribes that any person or association which intends or supports to bring about secession or cause disaffection against India or disclaims, question or disrupts the sovereignty of the country, can be deemed as 'unlawful'. This has been interpreted in many different ways in recent years both positively and negatively. On one hand, it does provide for strict rules to eradicate terrorism. But on the other hand, it has also been applied periodically to muffle any sort of dissent against the government. At the most receiving end are the people belonging to minority communities including Dalits, tribals, religious and ethnic minorities etc. Thirdly, while the Home minister kept reiterating the role of NIA as central in probing cases under UAPA. He did not mention whether it was the failure of state police that resulted in such a decision.

Currently, two petitions have been filed at the Supreme Court saying that the Unlawful Activities Prevention Amendment Act is 'unconstitutional'^{ix}. Both the petitions challenge the constitutional validity of section 35 and 36 of the UAPA Amendment that gives power to the Centre to deem an individual or organisation as a terrorist or terrorist organization. It is also seeking direction from the court to declare the UAPA violative of fundamental rights as enshrined under Article 14 (Right to Equality), 19 (Right to Free Speech and Expression) and 21 (Right to Life) of the Constitution.

National Investigation Agency (Amendment) Act 2019 (“NIA Amendment”)

The NIA Amendment passed in Lok Sabha on 15th July 2019 and Rajya Sabha on 17th July 2019 amends the National Investigation Agency Act, 2008 (“NIA Act”) which made NIA as a central agency to probe terror cases in any part of the country.

What are the salient amendments?

(i) The NIA Amendment increases the scope of the offences under the NIA Act to include: (i) human trafficking, (ii) offences related to counterfeit currency or bank notes, (iii) manufacture or

sale of prohibited arms, (iv) cyber-terrorism, and (v) offences under the Explosive Substances Act, 1908.

(ii) The NIA Amendment also expands the jurisdiction to investigate and prosecute Scheduled Offences² as defined in the NIA Act in India and abroad, subjected to international treaties and domestic laws. These cases will be tried at Special Courts in New Delhi.

(iii) It allows the Central government to notify a Court of Session as Special NIA Court after consultation of the Chief Justice of the High Court

Here's what we must know

The Amendment goes against the notion of federalism. The state governments are equipped within its rights to prosecute certain offences listed under the new amendment. For example, all cases of human trafficking may not be linked to national security. Listing of such offences may mean that the power of the state governments would be restricted and control would be with the NIA.

The Amendment was not necessary. The Home Minister, Amit Shah, in Rajya Sabha stated that the amendment would help the NIA to carry out investigation in a smooth and speedy manner. But the rationale for allowing the union government to prosecute offences such trafficking, explosive substance etc. is unclear. Even under the unamended NIA Act, if offences related to the above-mentioned legislation were committed in connection to a terror offence, the NIA would have had the authority to prosecute them^x

We also need to talk about the autonomy of NIA and drastic increase in its powers. It's important to point out that the NIA operates directly under the Union government and its recent prosecution of certain cases has been questioned due to allegations of bias^{xi}.

The amendment also gives power to the NIA to probe crimes committed by individuals which are against Indian citizens or “affecting the interest of India”. Apart the term being undefined in the new act, it could also be misused for law enforcement agencies or government to conflate critical voices and dissent.

The Jammu and Kashmir Reorganisation Act 2019 (“J&K Act”)

The J&K Act was introduced and passed in Rajya Sabha on 5th August 2019 and Lok Sabha on 6th August 2019. The Bill provided for the reorganisation of the state of Jammu and Kashmir

² In The National Investigation Agency (Amendment) Bill, 2019 the schedule to the Act specifies a list of offences which are to be investigated and prosecuted by the NIA. These include offences under Acts such as the Atomic Energy Act, 1962, and the Unlawful Activities Prevention Act, 1967. The Bill seeks to allow the NIA to investigate the following offences, in addition: (i) human trafficking, (ii) offences related to counterfeit currency or bank notes, (iii) manufacture or sale of prohibited arms, (iv) cyber-terrorism, and (v) offences under the Explosive Substances Act, 1908

into the Union Territory of Jammu and Kashmir and Union Territory of Ladakh. The bifurcation of the state was sought by abrogating article 370 which provided special status to the state of Jammu and Kashmir allowing it to draft its own constitution and restricted Parliament's Legislative power in the state. Under this provision, the Centre could extend laws only on certain sectors including communication, external affairs and defence, after consulting the state government. On matters other than these, concurrence of the state government was mandatory.

The salient aspects of J&K Act are:

(i) Jammu and Kashmir has been reorganized into (i) the Union Territory of Jammu and Kashmir with a legislature, and (ii) the Union Territory of Ladakh without a legislature. The Union Territory of Ladakh will comprise Kargil and Leh districts, and the Union Territory of Jammu and Kashmir will comprise the remaining territories of the existing state of Jammu and Kashmir.

(ii) The Union Territory of Jammu and Kashmir will be administered by the President through an Administrator appointed by him known as the Lieutenant Governor. The Union Territory of Ladakh will be administered by the President, through a Lieutenant-Governor appointed by him.

(iii) The Legislative Council of Jammu and Kashmir would be dissolved and all the pending bills would lapse.

(iv) The Act also extends 106 central laws that will be made applicable to Union Territories of Jammu and Kashmir and Ladakh on a date notified by the central government. These include the Aadhaar Act, 2016, the Indian Penal Code, 1860, and the Right to Education Act, 2009. Further, it repeals 153 state laws of Jammu and Kashmir. In addition, 166 state laws will remain in force, and seven laws will be applicable with amendments. These amendments include lifting of prohibitions on lease of land to persons who are not permanent residents of Jammu and Kashmir.

Here's what we must know

The main focus of the Centre was to have 'one nation, one constitution' as binding principle. In his speech, Amit Shah claimed that the move will help in improving the status of health, education, social welfare, employment and many other sectors in Jammu and Kashmir. This would bring out development in the valley. Though these claims were later challenged by John Dreze, renowned economist, saying that data suggest Jammu and Kashmir outperforms Gujarat on many socio-economic indicators^{xii}. He also expressed apprehension regarding the bill saying that this may result in more violence in the valley.

Many also raised concerns on the manner in which the decision was taken by the government. The valley was already in distress with the cancellation of the Amarnath Yatra and heavy deployment of army personnel. The decision of scrapping Article 370 was taken amidst such tensions. Soon after the decision strict curfew was applied in Jammu and Kashmir with no channels of communication. Additionally, all the leaders of various political parties, separatist leaders, activists were kept under house arrest. Many journalists, activists, academicians, and

former bureaucrats opposed the decision by saying that it goes against the constitution. They believed that the Centre should not stop people from expressing themselves by putting them under curfew.

The Surrogacy (Regulation) Bill, 2019

It is a known fact that India has emerged as a surrogacy hub for couples from different countries for past few years. In 2002, Indian Council of Medical Research (ICMR) released guidelines which made commercial surrogacy legal in India, but with no legislative backing^{xiii}. Since then, incidents of unethical practices, exploitation of surrogates, abandonment of children born out of surrogacy and import of human embryos and gametes have become widespread in parts of India. This misuse is a result of the lack of legislation to regulate surrogacy. Keeping this in mind, the government thought it was necessary to enact a legislation to prohibit the potential exploitation of surrogate mothers and to protect the rights of children born through surrogacy. The Surrogacy (Regulation) Act, 2016 was introduced in Lok Sabha in November 2016. It prohibited commercial surrogacy, allowing only altruistic surrogacy (the surrogate does not receive monetary compensation) with specific criteria for the intending couple and surrogate mother both. Amendments to the 2016 Act were circulated in Lok Sabha in December 2018 after the Standing Committee on Health and Family Welfare examined the Bill and submitted its report in August 2017.

The amendment in 2018 made changes in the eligibility conditions for the surrogate mother, insurance coverage for the surrogate mother, and time period for granting authorization for the surrogacy. It further provided an option for the surrogate mother to withdraw from the surrogacy before the embryo is implanted in her womb, and prohibited any kind of sex selection. The 2016 Act stated that anyone who contravenes any provisions will be punishable with imprisonment for a minimum term of five years, and a fine of up to 10 lakh rupees. The 2018 amendments replaced imprisonment for a minimum term of five years with a maximum term of five years. It also amended the punishment for intending couple or any person initiating commercial surrogacy³.

What are the new amendments?

The Surrogacy (Regulation) Bill, 2019 was introduced on July 15, 2019. The Bill prohibits commercial surrogacy, but allows altruistic surrogacy, which involves no monetary compensation to the surrogate mother other than the medical expenses and insurance coverage during the pregnancy. Surrogacy is permissible only under the following conditions: (i) for intending couples who suffer from proven infertility; (ii) altruistic; (iii) not for commercial purposes; (iv) not for producing children for sale, prostitution or other forms of exploitation; and (v) for any condition or disease specified through regulations. Further, surrogacy clinics cannot undertake surrogacy related procedures unless they are registered by the appropriate authority.

³ A minimum term of five years and a fine of up to 10 lakh rupees, to minimum term of five years with a maximum term of five years

The Bill makes provisions for the constitution of Surrogacy Boards at National and State level. These bodies will advise the central government on policy matters relating to surrogacy and lay down the code of conduct of surrogacy clinics. Appropriate authorities shall act as the executive bodies for implementing the provisions of the Act at various levels.

The bill only allows ‘ethical altruistic surrogacy’ to the intending infertile Indian married couple between set age groups⁴. The intending couples should be legally married for at least five years and should be Indian citizens. It also states that the surrogate mother should be a close relative of the intending couple, within a specific age group, and should be a married woman having a child of her own. It further provides that the surrogate mother shall be allowed to act as surrogate mother only once.

The bill bans commercial surrogacy and makes abandonment of the child born through surrogacy, exploitation of the surrogate mother, selling of the human embryo for the purpose of surrogacy an offence punishable with imprisonment for a term which shall not be less than ten years and with fine which may extend to ten lakh rupees.

The offences under the Bill include: (i) undertaking or advertising commercial surrogacy; (ii) exploiting the surrogate mother; (iii) abandoning, exploiting or disowning a surrogate child; and (iv) selling or importing human embryo or gametes for surrogacy. The penalty for such offences is imprisonment up to 10 years and a fine up to 10 lakh rupees. The Bill specifies a range of offences and penalties for other contraventions of the provisions of the Bill

Here’s what we must know

The surrogacy bill however raised a lot of questions from some sections of the society and paved the way for outrage over its restrictive measures.^{xiv} The term close relative which is a precondition for surrogacy, is not defined anywhere in the act. It has been left to the whims of the authorities who will allow or disallow the surrogacy to happen. Also, the relative comes with its own preconditions – of being married and having a child of their own. Further, an important issue is also that of granting and deciding eligibility requirements for the surrogacy which are left completely with the proposed national and state bodies. The bill requires the parents wanting to have a child through surrogacy to have obtained an eligibility and medical certificate from the authorities. If the certificate is rejected, there is no room for any review procedure for the couple. Most striking of all, if only married couples (for 5 years at least) are eligible, it leaves out a huge number of population including homosexuals, live in couples and single parents. In that sense, this bill basically goes against many judgments, especially the Sec 377 judgment and right to privacy judgment which both upheld privacy and autonomy of people.

In 2016, the surrogacy market stood at 2.3 billion dollars, one year after foreign couples were banned from using Indian women as surrogates. Since the bill has been introduced, this figure has been shrinking because of some pertinent reasons. One is the stringent legalities around it, another is the general apprehension that doctors carry when couples approach them. Because of this decline, many chains which were dependent on surrogacy revenues got affected adversely.

⁴ The age of 23-50 years and 26-55 years for female and male respectively

Medical experts are also of the opinion that the bill will adversely affect childless couples. There are patients suffering from diseases like cancer who are not allowed to carry babies, there are women who do not have wombs, and certain medical conditions deter women from becoming pregnant despite being fertile. Many of these will be devoid of this medical advancement privilege.

Some people are asking if instead of banning, there should have been more regulatory measures. Legal experts say that it's difficult to stop something by banning it. Regulatory measures allow for safeguards against exploitation, fraud, etc., which banning does not. Banning pushes this activity now to darker places where couples might try to have surrogate babies through illegal measures.

Some people are of the opinion that the surrogacy bill should have been included in the Artificial Reproductive Technology Bill instead of being envisaged as a separate act in itself.

The bill dictates right and wrong for women and categorizes them for being eligible or not, which raises a lot of questions about state's moral policing approach.

The Protection of Human Rights (Amendment) Act, 2019

The Amendment Act was passed in Lok Sabha on Jul 19, 2019 and subsequently passed in Rajya Sabha on Jul 22, 2019 and seeks to accelerate the process of appointment of chairperson and members of the National Human Rights Commission (NHRC). It will amend the Protection of Human Rights Act, 1993. The Protection of Human Rights Act, 1993 was enacted to provide for the constitution of: National Human Rights Commission (NHRC), State Human Rights Commission (SHRC) and Human Rights Courts for the protection of human rights.

What are the new amendments?

A person who has been Chief Justice of the Supreme Court or a Judge of the Supreme Court will be the chairperson of the National Human Rights Commission (NHRC). Earlier, Chief Justice of the Supreme Court can become the chairperson of the NHRC. Further, the Amendment Act amends to allow three members to be appointed, of which at least one will be a woman. Earlier it was two members only.

A person who has been Chief Justice or Judge of a High Court will be chairperson of a State Human Rights Commissions (SHRC). Earlier, Chief Justice of a High Court can become the chairperson of the SHRC.

The Amendment Act reduces the term of the chairperson and members of the NHRC and SHRC to three years or till the age of seventy years, whichever is earlier. The Amendment Act removes the five-year limit for reappointment of members of the NHRC and SHRCs.

Here's what we must know

The amendment will make NHRC and SHRC more compliant with the Paris Principle, as explained below, concerning its autonomy, independence, pluralism and wide-ranging functions in order to effectively protect and promote human rights. According to the Paris Principles National Human Rights Institutions (NHRIs) need to: Protect the human rights, including receiving, investigating and resolving complaints, mediating conflicts and monitoring activities and promote human rights through education, outreach, training, capacity building etc^{xv}.

The major concern of the Bill is politicization and independence of the body because in the absence of any eligibility criteria, the role of the appointment committee, where three out of five members are from the appointment by the Government, which is a clearly suggest that direct attack on autonomy and independence of the body.

🚩 Special Economic Zones (Amendment) Act, 2019

The Special Economic Zones (Amendment) Bill, 2019 was introduced in Lok Sabha in June, 2019. It amends the Special Economic Zones Act, 2005 (“Act”) and replaces an Ordinance that was promulgated in March, 2019. The Act provides for the establishment, development and management of Special Economic Zones for the promotion of exports.

What are salient amendments?

Under the Act, the definition of a person includes an individual, a Hindu undivided family, a company, a co-operative society, a firm, or an association of persons. The Amendment adds two more categories to this definition by including a trust, or any other entity which may be notified by the central government.

Here's what we must know

The Act by formation of Special Economic Zones (SEZs) was instrumental in attracting the coveted Foreign Direct Investments (FDI) and have aided in the creation of infrastructure, employment and regional development.

The primary objectives of introducing the Amendments by the government are 'employment generation' as well as infusing a relative 'ease in the doing of business process in India.

Straight-forwardly, the Amendment will lead to inclusion of different types of trusts, ranging from the public charitable trusts with their social missions, as well as the business and private trusts engaged in real estate investments and infrastructure investments. The inclusion of the above trusts will increase a wide range of eclectic activities such as healthcare, skill development programs, education and numerous other activities resulting into various employment opportunities in the country. The aforementioned inclusions have the potential to open up diverse avenues of employment for the local population where the SEZs fall as well as instill in them a much-needed skill development.

Analysts have always referred to the unrealized potential of India's business trusts, particularly the Infrastructure and Real Estate Investment Trust. These trusts are still in a relatively undeveloped stage, however the offering of financial incentives originally set aside for the SEZs could inject a much-needed push for the units as well as strengthen India's capability to mobilize funds from the private sector as well as from the overseas.

Economic analysis suggests that infrastructure as well as real estate trusts are a vital underutilized asset which operates like a mutual fund, thereby raising finance directly from the investors to invest in domestic projects. Consequently, such a linkage could also make commercial objectives of SEZs compatible with a comparatively socialistic mission of trusts⁶.

One of the issue with the SEZ Policy is a considerable portion of land allotted to the SEZ units are apparently non-operational. The existence of non-operational units not only points out to the massive unserviceability of the existing economic enclaves but also points out the glaring policy gap and a misalignment between the state's vision on one hand and the actual state of affairs on the other. Another reason why the amendment is a welcome step is that the unused land would now become productive.

Even though the Amendment has a significant impact on SEZ, the government has completely ignored the SEZ units in the budgets and no conducive policy has been introduced to facilitate any such growth. Despite its lofty ambitions and ideals, the SEZs still suffer from the ills of corruption and political manipulations which has curbed them from turning into the manufacturing powerhouse that they were meant to be.

Currently unemployment in India has reached the highest rate in about 45 years. In the last five years, our exports have barely increased by 10%. According to replies in the House, 150 SEZs are non operational. Half the land notified for SEZs is lying vacant; exports are not growing fast enough to help generate employment. What structural reforms will you undertake to ensure the advance of this policy?''

Note: We would like to extent our gratitude to Simrata Gujral for providing valuable inputs and suggestions.

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ⁱⁱRoy, Chakshu. “Parliament’s ‘Record-Breaking’ Session: Quantity Versus Quality”. Bloomberg Quint. <https://www.bloombergquint.com/opinion/parliaments-record-breaking-session-quantity-versus-quality>

ⁱⁱⁱ Roy, Chakshu. “To ensure legislative scrutiny, every bill must be sent to a parliamentary committee”. The Indian Express. <https://indianexpress.com/article/opinion/columns/rti-amendment-bill-parliament-rajya-sabha-deliberation-5855116/>

^{iv}Banare, Abhijeet & Roy, Chakshu “Parliament Committees Are Not Political Instruments”. News Click. <https://www.newsclick.in/Parliament-Committees-Rajya-Sabha-RTI-Act>

^{vi}Press Information Bureau, Government of India, Ministry of Personnel, Public Grievances & Pensions. “Rajya Sabha passes RTI Amendment Bill, 2019” <https://pib.gov.in/newsite/PrintRelease.aspx?relid=192264>

^{vii}The Hindu Business Line. “RTI Act amended in the face of strong opposition”. <https://www.thehindubusinessline.com/news/national/rti-act-amended-in-the-face-of-strong-opposition/article28656467.ece>

^{viii}Datta, Saura. “Madhya Pradesh Scheme Incentivising Public Prosecutors Can Endanger Justice” The Wire. <https://thewire.in/law/madhya-pradesh-incentive-public-prosecutors-justice>

^{ix}The Economic Times. “Second plea in SC challenging amendments to UAPA Act”. <https://economictimes.indiatimes.com/news/politics-and-nation/second-plea-in-sc-challenging-amendments-to-uapa-act/articleshow/70817752.cms>

^xAmbasta, Kunal. “NIA amendment bill infringes upon state authority, must be reconsidered”. The Indian Express. <https://indianexpress.com/article/opinion/columns/nia-amendment-bill-amit-shah-bjp-5852372/>

^{xi}Mahaprashast, Ajoy Ashirwad. “Fact Check: Was Amit Shah Right to Say NIA Had No Proof Against Samjhauta Accused?”. The Wire. <https://thewire.in/politics/fact-check-was-amit-shah-right-to-say-nia-had-no-proof-against-samjhauta-accused>

^{xii}Vishwadeepak. “Economist Jean Dreze: Article 370 helped reducing poverty in Jammu and Kashmir”. National Herald. <https://www.nationalheraldindia.com/india/economist-jean-dreze-jandk-more-developed-than-gujarat-special-status-helped-reducing-poverty>

^{xiii}Bera, Sayantan & Doval, Nikita. “India govt moves to ban commercial surrogacy” Live Mint. <https://www.livemint.com/Politics/iJaMugwI57XmKANE1juUnO/Cabinet-clears-bill-on-surrogate-motherhood.html>

^{xiv}The Print. “Modi govt's Surrogacy Bill raises questions about fairness, freedom of choice”. <https://www.youtube.com/watch?v=Fh1z7Ex3Yss>

^{xv}Rajasekaran, Ilangovan. “Amendments to the Protection of Human Rights Act, 1993: Trampling on rights” Frontline. <https://frontline.thehindu.com/the-nation/article29068754.ece>

Official Notices:

- ✚ THE RIGHT TO INFORMATION (AMENDMENT) ACT, 2019
<http://egazette.nic.in/writereaddata/2019/209696.pdf>
- ✚ THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019
<http://egazette.nic.in/WriteReadData/2019/209473.pdf>
- ✚ THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (AMENDMENT) ACT, 2019
<https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf>
- ✚ THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2019
<http://egazette.nic.in/WriteReadData/2019/210355.pdf>
- ✚ THE NATIONAL INVESTIGATION AGENCY (AMENDMENT) ACT, 2019
<http://egazette.nic.in/WriteReadData/2019/208281.pdf>
- ✚ THE JAMMU AND KASHMIR REORGANISATION ACT, 2019
<http://egazette.nic.in/WriteReadData/2019/210407.pdf>
- ✚ THE PROTECTION OF HUMAN RIGHTS (AMENDMENT) ACT, 2019
<http://egazette.nic.in/WriteReadData/2019/208592.pdf>
- ✚ THE SPECIAL ECONOMIC ZONES (AMENDMENT) ACT, 2019
<http://sezindia.nic.in/upload/uploadfiles/files/SEZ%20Act%20amedment%202019.pdf>