FAST-TRACK PARLIAMENT, UNDEMOCRATIC LAWS

THE 2019 MONSOON SESSION

People's Union for Democratic Rights
(PUDR)

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INTRODUCTION

The Indian Parliament passed a record number of 28 Acts between 17 June and 7 August 2019, the maximum in one session of Parliament. This Monsoon session was the first after the 2019 general elections in which the BJP-led NDA government returned to power for its second term, having secured 353 out of 545 seats i.e. an almost two-thirds majority. With a divided opposition confined to 189 seats with no clear leading Opposition party, the session saw a completely lop-sided Lok Sabha. The unprecedented passage of 28 Acts was ensured with a 10-day extension beyond 26 July, the scheduled date for closure of the session. In fact, it is in these 10 days that some of the most crucial legislations in the history of independent India, such as the Jammu and Kashmir (Reorganization) Act 2019 abrogating special status of the state, were passed. The fast-tracking of parliamentary procedures was a systematic exercise in undermining hard-won democratic rights and independence of democratic institutions. Not surprisingly, these fast-tracked legislations are those which have dangerous long-term social, economic and political implication for class, caste, religious, and other minorities.

The statistics on the Parliamentary functioning in the Monsoon session allow for significant inferences. Out of the total Acts passed, 57% were discussed for less than 3 hours, and one as decisive as the J&K Reorganization Bill, was discussed only for a little over 7 hours in both Houses put together. On an average, about 50% of the total time of the MPs was spent in passing Bills, but less than 30% of their total time was spent in debates. None of the bills tabled in this session were referred to any committee for consideration, disregarding a routine but essential part of law-making, where committees help refine drafts and point out their downsides. In the past, in the 14th Lok Sabha session 60% of the total bills were referred to committees, 71% in the 15th Lok Sabha and 25% in the 16th Lok Sabha, as compared to 0 (zero) in the 17th Lok Sabha session (according to statistics provided by PRS Legislative Research). In the instance of a number of Bills, opposition parties were neither informed beforehand nor were presented with the draft Bills with adequate time before voting, and were hence caught unaware and ill-informed on how to respond on the content. However, at its closing the speaker of the Lok Sabha labelled the session as the 'most productive' session since 1952, clearly implying that what counts as the yardstick of legislative competence under the present dispensation is the quantity of laws made and not the quality of deliberations, or the deleterious effects of enactments on the democratic fabric of the Constitution. Media reports on this unprecedented 'productivity' of a Parliament session

citing politicians of the ruling regime too have opportunely contributed to the erasure of democratic norms, of wider debates and consultation.

The procedural arbitrariness in the passage of these laws in violation of the federal structure of the country and the idea of an accountable government that Parliament represents, is part and parcel of the extraordinary threat to people's democratic rights. The session has witnessed the passage of laws like The Aadhaar And Other Laws (Amendment) Act 2019 that violates the fundamental right to privacy of Indian citizens, The Protection Of Human Rights (Amendment) Act 2019 and The Right To Information (Amendment) Act 2019 that rob democratic institutions of autonomy and in doing so disarm citizens of the limited mechanisms available for holding the state accountable. The Monsoon session is also credited with the passing of The Unlawful Activities Prevention (Amendment) Act 2019 And National Investigation Agency (Amendment) Act 2019 which allow for more arbitrary provisions in the already existing draconian counter-terror legislations, provide indiscriminate power to investigating agencies in a clear violation of rule of law and ordinary safeguards contained in criminal law. Most stark is the enactment of the Jammu And Kashmir (Reorganization) Act 2019 Etc. violating the constitutional protection guaranteed to the people of Kashmir through an asymmetric federal arrangement, with a complete silencing of Kashmiri voices, of elected representatives as well as those of the people. Laws such as the Right to Information (RTI) Act, which have been a product of grassroot mobilization were amended without any discussion with the groups involved in drafting the original law. For the Unlawful Activities Prevention (Amendment) Bill too, the Home Ministry turned down RTI applications seeking more information on the impending amendment.

Already since the very start of the Winter Session of the Parliament which began on 18 November 2019, the apprehensions of an escalation of anti-democratic enactments again through by-passing and fast-tracking parliamentary norms, are proving to be all too well-founded. On 26 November 2019, the Transgender Persons (Protection of Rights) Act was passed despite continuing protests by queer, trans and women's groups over its undemocratic content. With Bills such as the Citizenship Amendment Bill which is designed to fundamentally alter the secular foundations of Indian citizenship and divest certain groups of political and economic rights, waiting to be pushed through in the ongoing winter session, we face being hurtled into an ice-age. It is in this context that PUDR presents a critique of nine hastily-passed laws of the Monsoon session of 2019 which seriously undermine democratic rights and autonomy of democratic institutions,

as a pointer towards the direction our polity is taking.

THE AADHAAR AND OTHER LAWS (AMENDMENT) ACT 2019

The Aadhaar and Other Laws (Amendment) Act 2019 was passed by the Rajya Sabha on 8 July 2019, having earlier been passed by the Lok Sabha on 4 July 2019. It had earlier been introduced as a Bill in 2018 in the wake of the Supreme Court rulings in the two *KS Puttaswamy* v. *Union of India* judgments (the first relating to the constitutional status of the right to privacy in the popularly called "privacy" judgment, and the second relating to the constitutional validity of the UID, popularly called as the "Aadhar" judgment). The privacy judgment upheld the right to privacy as a fundamental right under Articles 14, 19 and 21 of the Constitution. The Aadhar judgment upheld the constitutional validity of the UID as a form of ID based on a digital database of biometric and personal information of all citizens and residents of India, while also holding that private entities cannot be allowed use or access to the UID database.

The Supreme Court had ruled that the provision under the Aadhar Act enabling body corporates and individuals to seek Aadhaar authentication was unconstitutional, since it would infringe on an individual's right to privacy, and enable the commercial exploitation of individual biometric and demographic information by private entities. The Amendment Act ostensibly removes this provision, yet states that 'entities' (which includes private bodies) may be allowed to perform authentication through Aadhaar if permitted by law, or if the Unique Identification Authority of India (UIDAI) is satisfied that it is compliant with privacy and security standards, etc. In fact, it goes even further to explicitly amend the Indian Telegraph Act, 1885 and the Prevention of Money Laundering Act, 2002 to allow telecom companies, banks etc. to use Aadhaar for verifying their clients' identities. In yet another example of doublespeak, the Amendment Act provides for voluntary use of Aadhaar and disallows the denial of services for not having an Aadhaar number, yet states that notwithstanding any other provision, Parliament may pass a law making Aadhaar-based authentication mandatory for any service.

Moreover, the Supreme Court had ruled that there should be a judicial officer involved in determining whether disclosing information on the UID database should be disclosed in the interest of national security. But the Amendment maintains that the power rests

with the executive alone, merely replacing the role of the Joint Secretary with that of the Secretary. In fact, there is no judicial role envisaged in new provisions on civil penalties for entities that fail to comply with the Act, as the UIDAI has been given the sole authority to impose such penalties.

Various other provisions of the Amendment Act also widen the UIDAI's powers without introducing any measures for accountability. While the UIDAI earlier needed the Central Government's approval to appoint its officers, the Amendment Act removed this requirement, effectively ensuring that no one can question the UIDAI's composition even if its officers hold posts in sectors such as telecom, banking etc. that poses grave conflicts of interests. Further, the Amendment Act explicitly gives the UIDAI power to issue compulsory directions even to entities such as banks, which have historically been answerable to the RBI alone.

Moreover, in a worrying departure from the Act, the Amendment permits offline verification, without specifying what such offline verification will comprise. Unlike other Officially Valid Documents such as PAN card, passport etc., there is no officer responsible or accountable for issuing the document to the enrollee. Aadhaar's sanctity thus depends on online authentication. Allowing offline verification without adequate safeguards increases the chances of leaks, tampering and a proliferation of fake Aadhaar cards.

The Amendment Act's failings lie equally in what it does not do, as much as in what it does. The changes do not provide any alternate means of establishing identity for beneficiaries being excluded from welfare services. Contrary to the Supreme Court's observations, the government brought in the Aadhaar amendments before passing the Data Protection Bill to safeguard private information of Aadhar cardholders and fix accountability for violations.

Before the Aadhar Amendment was passed in the Monsoon session, it had earlier been introduced and also lapsed in 2018. The Government had then brought in the same amendments through an Ordinance on 2 March 2019. The latest Amendment Act merely cements the changes that have already been in place since earlier this year. Not only do these changes reflect the government's continued insistence on expanding the (only nominally voluntary) use of Aadhaar, in blatant disregard of issues concerning citizens' privacy and the denial of welfare benefits, these changes also directly contravene the Supreme Court's judgment on various counts.

THE CODE ON WAGES 2019

The Bill was introduced on 23 July by the Labour Minister, Santosh Gangwar, and was passed by voice vote in the Lok Sabha on 30 July and in Rajya Sabha on 2 August, 2019. The Code on Wages 2019 is the first in the series of four labour codes which seek to replace 44 labour laws in the country. It subsumes the relevant provisions of The Minimum Wages Act, 1948, Payment of Wages Act 1936, Payment of Bonus Act, 1965 and Equal Remuneration Act 1976.

The Code on Wages stipulates a national floor level minimum wage with legislative protection. The national floor wage proposed in 2019 is Rs 178 per day which translates to Rs. 4628 per month for a 26 day month. This figure is significantly lower than Rs 375 per day recommended by a committee of experts appointed by the labour ministry in January 2019.

While largely importing the erstwhile anti-labour regime of wages, the Code on Wages has introduced changes which only further weaken substantive and procedural protections in the matter of wage entitlements. Under the Code, the definition of 'employee' no longer includes the category of "out-workers", which consists of those who work out of their homes or other premises not under the control and management of the employer. This sits at stark variance with the purported object of the Code to "widen the scope of minimum wages to all workers". While provisions pertaining to maintenance of registers and records of payments did not explicitly preclude coverage of domestic workers, Section 50 of the Code statutorily sanctions such exclusion. It does so by defining "domestic purpose" to mean a "purpose exclusively relating to the home or family affairs of the employer" and providing that an employer who employs "not more than five persons for agricultural or domestic purpose" need not maintain a register containing details of such persons.

Section 25 expressly exempts more generally "Government Establishments" from being required to comply with the stipulations set out in Chapter III (Payment of Wages), which crucially pertain, among other things, to the time limit for payment of wages and permissible deductions from wages. This is in contrast with Section 1 of the Payment of Wages Act 1936, which carved out a more limited exception in this regard by restricting such an exemption to an "establishment owned by the Central Government".

Section 45 of the Code allows the appropriate government to appoint "an officer not

below the rank of a Gazetted Officer", to "hear and determine the claims which arise under the provisions of the Code." This is a significant relaxation from the earlier requirement in all four legislations of appointing an officer who is either a Labour Commissioner or a state government officer not below the rank of a Labour Commissioner" or any other officer "with experience as a Judge of a Civil Court or as a Stipendiary Magistrate", for hearing workers' claims.

If compliance mechanisms were already not weak, Section 56 of the Code allows a Gazetted Officer, appointed by a notification of the appropriate government, to compound an offence—not punishable with imprisonment—under the Code, before, and even after, the initiation of prosecution. It also mandates that such Officer can exercise discretion "subject to the direction, control and supervision of the appropriate government".

Further, the new Code replaces Labour Inspectors with 'Labour Inspectors-cum-Facilitators' who are now explicitly authorized to take on a conciliatory role in relation to strict compliance with statutory provisions: Labour Inspector-cum-Facilitators have been under Section 5(a) accorded the discretion to "advice employers and workers [about] the most effective means of complying with the provisions of [the] code subject to the instructions and guidelines issued by the appropriate government from time to time".

The Code affords discretion to the appropriate government to "lay down an inspection scheme" providing for "generation of a web-based inspection and calling for information relating to inspection electronically". Such an option carries with it the risk of the Labour Inspector-cum-Facilitators taking at face value documentation furnished by the employer, entirely dispensing with the need for physically inspecting premises and seeking information from workers.

The area jurisdiction of the Labour Inspector-cum-Facilitator has been rendered dangerously uncertain, as the appropriate government can confer jurisdiction on such Inspector through both "randomized selection" and by issuing "instructions and guidelines" from "time to time", assigning particular establishments to the Inspector. Where the erstwhile legislations contained a clause empowering Labour Inspectors to "enter, at all reasonable hours", an "employer's premises or place where employees are employed or work is given out to out-workers" for the purpose of examining register or records; the corresponding sub-section (6) of Section 51 has omitted this critical

enabling clause which allowed for surprise inspection visits for Inspectors-cum-Facilitators. Now, Facilitators don't have any quasi-judicial powers like Labour Inspectors. In the name of transparency the Code on Wages 2019 requires state inspection schedules are to be made web-based inspection schedules.

JAMMU AND KASHMIR (REORGANIZATION) ACT 2019 ETC.

On the morning of 5 August, 2019, the Home Affairs Minister Amit Shah tabled the Jammu and Kashmir (Reorganization) Bill before the Rajya Sabha. The Bill had not been listed in the List of Business for the day, and was circulated only ten minutes before it was tabled. Instead, the List of Business mentioned the introduction of the Jammu & Kashmir Reservation (2nd Amendment) Bill extending 10% reservations for Economically Backward Sections to the state.

Amit Shah announced that, as of that morning, the President of India had already passed the Constitution (Application to Jammu & Kashmir) Order 2019, followed by a Resolution for Repeal of Article 370 of the Constitution of India. As per the government, the effect of this Order and Resolution by the President of India was to amend Article 370(3) of the Constitution and extend the whole of the Constitution of India to Jammu and Kashmir. The Order also empowered the Parliament to pass laws on Jammu & Kashmir effectively abrogating its special status. Thirdly, the Order also effectively abolished Article 35(A) which had enabled the erstwhile state to limit land ownership to residents of the state only. This paves the way for an unrestrained settler colonial project in the region by effecting demographic changes, as people from mainland India will now be able to purchase property and reside there. There had been no information before Amit Shah's announcement of even a proposal for the President to pass such orders and resolutions.

In exercise of the power granted by the Presidential Order, the Union Government tabled the Reorganization Bill to bifurcate the state into two Union Territories ('UT'), of Ladakh, and Jammu & Kashmir. Ladakh UT is under the direct control of the Union Government through the Lt. Governor, while the J&K UT is to have a Legislative Assembly with limited powers, and overall also under the control of the Union government through a Lt. Governor.

The Reorganization Bill also carried a Schedule of 106 central laws which were

extended to Jammu & Kashmir, including the Aadhaar Act, 2016, the Indian Penal Code 1860, among others. It also repealed 153 state laws and amended seven others. The Rajya Sabha passed the Bill the same day, and the Lok Sabha the next day on 6 August 2019.

Notably, the President was able to issue the Order and Resolution only because the state had been under President's Rule since December 2018, and the President was acting in place of the J&K Legislative Council. In exercise of his emergency powers, the President made a permanent amendment to the Constitution and abolished the Legislative Council itself, while making permanent changes to the status of Jammu & Kashmir under conditions of complete suppression of the voice of the Kashmiri people.

MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT 2019

The Muslim Women (Protection of Rights on Marriage) Bill was passed in the Lok Sabha on 26 July 2019 with 303 votes in favour and 82 against, to replace the earlier ordinance passed in February 2019. On 30 July 2019 the Bill was passed in the Rajya Sabha with 99 votes while 84 MPs voted against the Bill. The stated aim of the Act is "to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands", while the political objective sought to be achieved is the targeted criminalization and persecution of Muslim men. The President of India gave his assent on 31 July 2019.

Notably, the Supreme Court in 2017, in the *Shayara Bano* v. *Union of India* decision, had already struck down triple talaq as unconstitutional and void. To this extent, the Act does not add anything new to the law, except for criminalizing the pronouncement of talaq. However, the BJP government showed tremendous urgency in passing this law, as it had been introduced and passed in the Lok Sabha twice before (on 28 December 2017 and 27 December 2018) while it remained pending before the Rajya Sabha in both sessions. In the interregnum, the government promulgated The Muslim Women (Protection of Rights on Marriage) Ordinance twice, on 19 September 2018 and 21 February 2019.

The offence is non-bailable. Under the earlier Ordinance, there was no provision as to bail, but this has been added in the Act after prolonged protests. The husband is liable to imprisonment up to three years, and fine. The offence is cognizable and compoundable.

Although projected as a law for the emancipation of Muslim women, the Act in fact worsens the socio-economic rights available to divorced and separated women. Existing law provides more than the 'subsistence allowance' provided for under this Act, which also becomes even more difficult to secure once the husband has been imprisoned. The provision says that only the Muslim woman upon whom talaq is pronounced or her relatives may register a complaint with the police. This may also mean that most women will not report the offence owing to their economic dependence on their husbands and in laws. Women's groups, especially those working on Muslim women's rights, have vehemently opposed the enactment as it lends itself to arbitrary policing of Muslim men, destitution of Muslim women and children, and forcible separation of children from their fathers due to mandatory custody proceedings.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (AMENDMENT) ACT 2019

Amendment to the existing Protection of Children from Sexual Offences Act 2012 was passed in the Lok Sabha without any objection, on 1 August 2019 after the Rajya Sabha had already passed the Bill. The highlight of the Amendment is the insertion of provisions relating to enhanced penalties for various sexual offences, including the death penalty for 'aggravated penetrative sexual assault'. A deeper analysis of what the Amendment seeks to do through enhanced punishment reveals that it perpetuates the myth that severe punishment deters crime, without basing itself on any evidence linking enhanced punishment with a declining rate of crime.

However, attention also needs to be directed to a particular insertion that improves upon the 2012 law. This insertion concerns the definition of child pornography as an offensive category under the law. The new law defines child pornography as "visual depiction of sexually explicit conduct involving a child which include photograph video, digital or computer generated image indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child". The earlier law penalized the use of children for pornographic purposes without defining pornography and limited the ambit of the offence to the use of a child in any form of media for the purpose of sexual gratification. The Amendment now criminalizes child pornography as explicit sexual depiction of a child regardless of the purpose for which it has been used.

Besides the above clause, however, the Amendment does not make any substantial changes to its older version. Instead, the Amendment makes the punishment harsher in two ways. One, as mentioned above, by introducing the death penalty for 'aggravated penetrative sexual assault' and, two, by increasing the punishment for other kinds of sexual offences under the existing POCSO Act wherein the maximum punishment of life imprisonment has been clearly clarified as 'imprisonment for the remainder of natural life'. The punishment of death has been introduced for aggravated penetrative sexual assault as a populist move. Successive governments, in the course of introducing the death penalty for various offences have never been able to show any data that reveals that rate at which offences that attract the death penalty has reduced. Introducing this penalty in the POCSO Act, however, puts the life of a child under severe threat. The perpetrator may kill the child after having committed aggravated sexual assault in order to evade being identified, as the penalty for murder is also the same. The award of death may also impact the reporting of the crime, as in cases of child sexual abuse, the perpetrators have been found to be mostly family members, relatives or close associates.

The amendment also grossly ignores the fact that the rate of trial by courts under the POCSO Act is abysmally poor. According to the recently released NCRB report on Crimes in India 2017, a total of 36 cases were taken up for trial by various courts in cases where POCSO was applied on charges of rape with murder. Out of these 36, conviction was ordered in only 2 cases with a pendency rate of 94.4%. Similarly, for the year 2016, the NCRB had recorded 36022 cases being reported under POCSO, but in 89% of these cases, trial was pending by the end of 2016. In the absence of any certainty of the law being implemented, the severity of punishment becomes meaningless. While increased years of imprisonment and award of death are being presented as "delivery of justice to every child in the country", as observed by the Women and Child Development Minister Smriti Irani while debating the Bill in Lok Sabha, the law's dysfunctionality in its implementation was conveniently ignored. Instead death penalty as a form of punishment which is essentially arbitrary and irrevocable has been legitimized in the name of child protection.

The Amendment also lays down that whatever fine is imposed on the perpetrator would be paid to the victim to meet their rehabilitation and medical expenses. Child rights activists have for many years now been demanding proper guidelines to be laid down in respect of the award of compensation and the process thereof. The older version of the law provided for Special Courts' powers to direct payment of compensation in

appropriate cases. However, nothing more specific in the nature of a compensation scheme has been introduced in the Amendment. The Amendment, in addition to the earlier provision for compensation, now requires for fine to be paid to the victim in certain cases. This however, should not be confused with a scheme of compensation. The fine is being levied from the perpetrator, while compensation has to be the responsibility of the state, which the law allows the state to evade through this amendment. Even with regard to the fine being paid to the victim, the law is silent on the process, the authority that would oversee the process and the custodian of the minor victims who would be paid the amount on their behalf and restrictions on such custodians, leaving ample space for further exploitation of victims.

THE PROTECTION OF HUMAN RIGHTS (AMENDMENT) ACT 2019

The Protection of Human Rights Amendment Bill was passed unanimously in the Rajya Sabha on 22 July 2019. It had already been passed by the Lok Sabha on 19 July. The manner in which these amendments were tabled in the Parliament shows that the government did not want an informed discussion and debate on the amendment Bill. The Bill was cleared by the Lok Sabha the day before it was presented in the Rajya Sabha. The amendments moved by the members to the Bill were not circulated. Further, the reasons for introducing these changes to the composition of the NHRC and SHRCs are also absent.

The Protection of Human Rights Act 1993 had been promulgated for constituting the National Human Rights Commission (NHRC) as an *autonomous* statutary body responsible for safeguarding the rights to life, liberty and dignity of an individual guaranteed under the Indian Constitution, and inquire into complaints of violations of human rights by public servants. In a fundamental change, the 2019 Amendment provides that any former Judge of the Supreme Court can now be appointed the Chairperson of the NHRC. Prior to this amendment, only a former Chief Justice of India could be appointed as the Chairperson. Similarly, at the State level, any former Judge of the High Court can now become the Chairperson of State Human Rights Commissions and not only the Chief Justices of the High Courts. The modification now allows for political clout to influence who would be at the helm of the Commissions and discreetly choose favourably disposed candidates.

The other change that the amended Act brings is that of reduction of the tenure of the Chairpersons of NHRC and State Human Rights Commissions from five years or till the age of seventy years whichever is earlier, to three years and that they shall be eligible for re-appointment. The fact that tenure has been reduced further curtails the power of the chairperson to effect any substantial change. In fact, a shorter term coupled with the possibility of re-election would act as an incentive for the chairperson to placate the existing regime so that he/she is allowed to continue for long, and dis-incentivise any criticism.

The Amendment also increases the powers of the Secretary General of the NHRC and Secretary in case of SHRC. They are now allowed to exercise all administrative and financial powers, subject to Chairpersons' control. In the 1993 Act, they exercised only limited powers as may be delegated to them by the Chairperson. The secretary general is a senior bureaucrat who is appointed to the post in NHRC by the Ministry of Personnel, Government of India. Giving all administrative and financial powers to the Secretary General increases the degree of direct control exercised by political functionaries in the working of the commissions.

All these changes gravely compromise the autonomy of the Commission, which is expected to serve as a watch dog of rights violations, committed by successive governments as well.

THE RIGHT TO INFORMATION (AMENDMENT) ACT 2019

The Right to Information (Amendment) Act 2019 was passed in Lok Sabha on 22 July and in the Rajya Sabha on the 25 July. A vote on a motion in the RS to send the Bill before a Select Committee was defeated 117 to 75. The Act in 2005 was promulgated to promote transparency and accountability in the working of every public authority in India and was enacted after sustained grassroots mobilization and campaigning by peoples' movements and rights groups. The RTI Act earlier provided for the fixed tenure of five years for the Chief Information Commissioner (CIC) and the Information Commissioners (ICs) under section 13(a). The salary of the CIC and the ICs were equivalent to the salaries of the Chief Election Commissioner and the Election Commissioners respectively under section 13(c). The 2019 amendment to the RTI Act brings changes in both these provisions. With regard to the tenure of CIC and ICs, the

amendment makes the term of the CIC and ICs dependent on the notification of the central government and will be "for such term as may be prescribed by the Central Government".

In the matter of salaries given to CIC and ICs, the Amendment removes the earlier provision of RTIC Act 2005 and states that "the salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioner shall be such as may be prescribed by the Central government". Similar changes have been made to Section 16 with regard to the term and salaries and allowances of the Chief Information Commissioners and State ICs

The need for these amendments has not been adequately explained by the government. There was no public demand for such changes in the existing Right to Information Act. The Minister of State for Ministry of Personnel, Public Grievances and Pension, Dr. Jitendra Singh said, while introducing the Bill to amend the RTI Act, that it was an anomaly to equate the IC with a constitutional body like Election Commission and that the amendment seeks to correct this anomaly. The amendments brought clearly show that the main anomaly that the government wanted to do away with is the status and independence enjoyed by a statutory body like the CIC and the IC.

The intent of the government seems to be to bring the office of CIC and ICs under the control of the central government by denying them the fixity of tenure and salary. The purpose of the government becomes even clearer given the fact that in June 2017 it had in fact upgraded and harmonised the salaries of the Chairpersons and members of the various statutory Tribunals. Their Chairpersons' salaries were made equivalent to Election/Information Commissioners and to that of High Court judges. The Law Commission of India in its 272nd report on Assessment of Statutory Frameworks of Tribunals in India, 2017 had recommended the harmonisation of salaries and allowances of many of the statutory tribunals. Apart from seriously striking at the independence of the CIC, the amendments are also an affront to the federal structure in India. The amendment has sought to take over the states' prerogative in appointing the State ICs as they will now have to wait for the Central Governments' prescription of the term and salary of the commissioners. This also seriously impinges upon the implementation of the Right to Information Act, as it has brought the working of State ICs under the control and whims of the Central Government.

The text of the RTI Amendment bill was neither made publicly available, nor were there

any public consultations or feedback taken on the bill. Allegedly, it was only when it was notified in Lok Sabha's List of Business that the opposition parties got to know about the plan of the government to bring an Amendment Bill to the RTI Act 2005. The appeals by the opposition to send the proposed amendments to the parliamentary panel for scrutiny were either rejected or got defeated in the Parliament.

THE UNLAWFUL ACTIVITIES PREVENTION (AMENDMENT) ACT 2019 and NATIONAL INVESTIGATION AGENCY (AMENDMENT) ACT 2019

The UAPA Amendment was introduced in Lok Sabha on 8 July and was passed on 24 July. It was subsequently passed in the Rajya Sabha on 2 August and Presidential assent was given on 8 August. By 14 August, the law came into force. In an amendment to the Unlawful Activities Prevention Act ('UAPA'), the Parliament in its Monsoon Session empowered the Central government to designate individuals as 'terrorist' under the Act on its sheer belief, leaving the individual with little effective redress against this designation. Most worryingly, the amendments prescribe no new procedure nor punishment, leaving completely uncertain the purpose and impact of designating an individual as a terrorist.

Since 2004, when the Prevention of Terrorism Act 2002 was repealed and its anti-terror provisions imported into the UAPA, the UAPA has empowered government to declare organisations 'terrorist' merely if it believes that the organisation is "involved in terrorism", which is defined, circularly, as participating in terrorist acts, promoting terrorism, or being "otherwise involved in terrorism". Now, the Amendment adds a Fourth Schedule to the Act enlisting individuals as terrorists beyond terrorist organizations, but no new criminal offences have been specified.

Before introducing the Bill, there was no effective public consultation, and the Home Ministry recently rejected RTIs seeking copies of the cabinet note, correspondence and file notes relating to the amendment. The Home Minister stressed the need to ban individuals as 'terrorist' instead of only organizations, since individuals keep starting new ones, a claim that barely holds water given that the amendment does not provide any new powers to government to effectively prosecute individuals. The purpose of the amendment seems to be to label individuals as 'terrorists', such that their punishment is through social stigmatization, ostracisation, potential witch hunts and divesting of basic

civil rights, without making any specific charge against the individual concerned. The political design behind introducing the category of terrorist individual seems to be to silence those individuals who are inconvenient for the government and are not members of banned organizations.

The UAPA in fact already granted government sweeping powers to attach assets, prevent entry into the country and prohibit funds/services from being made available to people it simply suspects are engaged in terrorism, without any formal prosecution. Now, the Amendment gives arbitrary and enhanced powers to the National Investigation Agency to investigate offences relating to unlawful acts and terrorist acts/ organizations/ individuals by empowering officials of the rank of Inspector to investigate, whereas for other investigative agencies, only officials of the rank of Deputy Superintendent of Police or Assistant Commissioner of Police and above are empowered to investigate.

The ambiguity of the amendment, in fact, throws up worrying possibilities. For example, the UAPA criminalises voluntarily harbouring a person knowing them to be a terrorist. It's also unclear that if someone is designated a terrorist what does in entail to 'know' or be 'associated' with the person. Moreover, 'proceeds of terrorism' under the Act, which can be forfeited to the government, includes property intended to be used by an individual terrorist, and the amendment may allow this provision to wholesale be applied to all those designated as one.

As was earlier the case with organisations designated terrorist, individuals have effectively no redress against their designation. They must first appeal to the Central Government itself, the body that banned it, and then apply to a thoroughly opaque Review Committee which has no timelines to make its decision, does not have to reveal its reasoning, and does not even have to call on the individual/organisation to hear its case. There is no official information in the public domain on how many organisations ever even exercised this remedy, painting a bleak picture for individuals who are now vulnerable to the same fate.

Apart from providing for the designation of individuals as 'terrorist,' the amendments introduce another significant change. Earlier, the Director-General of state police would have to approve the seizure of properties alleged to belong to those suspected of engaging in terrorism. But the amendments do away with this requirement, substituting it with the approval of the Director-General of the National Investigation Agency (NIA) alone. This change thus removes an important check on the centre's power, affording it

even lesser accountability, and raises grave concerns about the centralization of power and the weakening of federalism.

The UAPA facilitates myriad other violations of constitutional rights—from dismantling safeguards available to the accused under ordinary criminal trials, to reversing the burden of proof if certain conditions are met—and its history reveals a pattern of use in targeting constitutionally-protected political dissent. The latest amendments further expand the law's already draconian nature and the attack on civil liberties it constitutes.

CONCLUSION

There is a clearly visible pattern in these new enactments and amendments to systematically erode democratic guarantees and functioning of democratic institutions. They extend governmental interference and control, do away with individual rights such as that to privacy, or redressal mechanisms against violations by public servants. They strengthen the hands of corporates through access to data and controlling wages, and doing away with the meager pro-worker labour mechanisms. Under the garb of seemingly progressive pro-women enactments, they increase state interference in civil life besides attacking Muslims. They decimate political struggles, movements and rights activities. In short the Laws passed in the Monsoon Session are a terrifying master-class in how to normalise lawlessness through the Lawful route of parliamentary democracy. The pro-capital, anti-poor and anti-Muslim nature of the state and its fascist character in the denial of all individual rights couldn't be clearer.

The winter session of the Parliament which commenced on 18 November 2019, looks to further cement this project. Pushing through of crucial anti-democratic legislations like the Citizenship Amendment Bill (CAB) is already underway. The CAB will alter the secular principles on the basis of which Indian citizenship can be acquired. It makes religious persecution a ground for acquiring Indian citizenship and restricts this privilege to six communities namely, Hindus, Sikhs, Jains, Buddhists, Parsis and Christians who fled to India from three countries- Afghanistan, Pakistan and Bangladesh. The Bill is very much a part of the nationalist Hindutva vision obvious in the ongoing NRC exercise in Assam to extradite Muslim residents as illegal immigrants and foreigners, which the Home Minister threatens to extend to the rest of the country as well.

The ongoing session has already passed the Transgender Persons (Protection of Rights) Act which violates the right of transpersons to self-determination and self-identification, recognized by the Supreme Court as a fundamental right under Art. 21 in the 2014 *NALSA v. Union of India* judgment. The government disregarded sustained opposition from civil society and demands in Parliament to refer the Bill, which mandates invasive medical procedures and bureaucratic certification before recognizing a person as transgender, to a Rajya Sabha Select Committee and passed the Bill as it is.

With a two-thirds majority in Parliament, the ruling party has the brute power to unilaterally exercise its will and endlessly push through more anti-people enactments much as it did in the Monsoon session, despite simmering protests against proposed legislations among different sections of people The writing on the wall as to where the second term of the BJP-led NDA government is taking Indian democracy couldn't be clearer; now is the time for all democratically minded people to come together, before it is too late.

We demand:

1) Repeal J&K (Reorganization) Act and uphold the right of the people of Jammu and Kashmir to self-determination
2) Repeal UAPA and the NIA Act in full, including all amendments
3) Repeal amendments to the Protection of Human Rights Act and the Right to Information Act, and ensure autonomy in the functioning of the NHRC, SHRC, and the Information Commissions
4) Withdraw the death penalty under POCSO, and ensure certainty of prosecution in cases of child sexual offences
5) Repeal the Code of Wages, Aadhar and Other Laws (Amendment) Act, Muslim Women (Protection Of Rights On Marriage) Act.
6) The Government uphold all democratic norms of Parliamentary procedure such as giving enough notice to the Opposition, allowing adequate time for debate, sending Bills to Parliamentary Committees for referral, taking account of civil society groups and stakeholders.