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POLITY AND GOVERNANCE

GOVT. SETS UP NEW PANEL TO REVIEW ALL NSO DATA

GIST : It replaces a committee which examined economic datasets only; move follows sharp critiques of India's statistical machinery; new panel to advise govt. on surveys, identify and plug data gaps

- The Union government has constituted a new internal oversight mechanism for official data, revamping a Standing Committee on Economic Statistics (SCES) set up in late 2019, soon after the findings from the last round of household surveys on consumption expenditure and employment were junked over "data quality issues".

- SCES, which was tasked with examining economic indicators only, will now be replaced by a Standing Committee on Statistics (SCoS) which has a broader mandate to review the framework and results of all surveys conducted under the aegis of the National Statistical Office (NSO).

Chairman

- Pronab Sen, former Chairman of the National Statistical Commission (NSC), has been named the chair of the new panel.
- The SCoS — with "enhanced terms of reference" vis-à-vis the SCES, "to ensure more coverage" — has 10 official members, and four non-official members who are eminent academics.
- It can have up to 16 members, as per the order issued by the Ministry of Statistics and Programme Implementation.
- The development comes amid sharp critiques of India's statistical machinery by members of the Economic Advisory Council to the Prime Minister, including its chairperson Bibek Debroy. He had mooted an overhaul of the system, and contended that the Indian Statistical Service has "little expertise in survey design".
- "The term of the SCES was coming to an end in any case, so it was decided to expand the committee's mandate beyond economic data and advise the Ministry on technical aspects for all surveys, such as sampling frame, design, survey methodology and finalisation of results," an official said.
- Apart from addressing issues raised from time to time on the subject, results and methodology for all surveys, the terms of reference of the SCoS include identification of data gaps that need to be filled by official statistics, along with a strategy to plug those gaps. It has been mandated to explore the use of administrative statistics to improve data outcomes. While the panel will help finalise survey results, the NSC will have the ultimate authority to approve the publication of those results.

Revisiting the numbers

The new Standing Committee on Statistics has a broader mandate to review framework and results of all NSO surveys

- The panel replaces the Standing Committee on Economic Statistics set up in 2019 after the findings from the last round of household surveys on consumption expenditure and employment were junked, citing 'data quality issues'

- Its terms of reference include finalisation of survey results, better use of administrative data

- Apart from survey design improvements, SCoS will identify data gaps and strategies to plug them

ON RAHUL GANDHI'S CONVICTION

THE GIST

The High Court was deciding on an application to suspend the order of conviction against Mr. Gandhi. The Court ultimately denied relief to the petitioner relying on the principle that a stay of conviction is not a rule but an exception to be resorted to in rare cases.

The comment by Mr. Gandhi, "why all thieves have Modi surname" is found penal under Section 499 that makes defamatory an imputation concerning "a company or an association or collection of persons as such."

Silent satyagraha

Congress supporters stage a 'silent satyagraha' against the Gujarat High Court verdict on the defamation case against party leader Rahul Gandhi, at Shaheed Smarak in Lucknow on July 12. ANI

The Constitution of India under Article 19(2) had declared "defamation" as one among the exceptions to free speech. In criminal defamation, the actual harm inflicted or suffering caused is not a condition to constitute offence as intention or knowledge is sufficient

The Gujarat High Court verdict on Rahul Gandhi's criminal revision petition raises pertinent questions on defamation, disqualification and electoral representation law. The High Court was deciding on an application challenging the refusal of the Sessions Court to suspend the order of conviction against Mr. Gandhi under Section 389 of the Criminal Procedure Code (CrPC). The Court ultimately denied relief to the petitioner relying on the principle that a stay of conviction is not a rule but an exception to be resorted to in rare cases.

The verdict that this case does not fall in the category of such rare cases is central to the animated debate on this issue.

Speech and reputation

The Constitution of India under Article 19(2) had declared "defamation" as one among the exceptions to free speech which was thereby validated under

Sections 499 and 500 (dealing with the definition and punishment of defamation cases) of the Indian Penal Code (IPC). One is accused of criminal defamation when an imputation is made with the intention to harm, or having reason to believe that it will harm, the reputation of a person. In criminal defamation, the actual harm inflicted or suffering caused is not a condition to constitute offence as intention or knowledge is sufficient.

The comment by Mr. Gandhi, "why all thieves have Modi surname" is found penal under Section 499 that makes defamatory an imputation concerning "a company or an association or collection of persons as such." The applicability of the expression "collection of persons" to Mr. Gandhi's remark is the fulcrum of the case. The Magistrate Court was of the opinion that people with the surname Modi or belonging to the Modi community constitute an identifiable class and pronounced the accused guilty with maximum possible sentence.

Earlier judgments on defamation

In one of its pioneering pronouncements on defamation law, the Supreme Court in Sahib Singh Mehra versus State of Uttar Pradesh (1965) relied on the criteria of identifiability and definitiveness as determinants to fall in the category of a "collection of persons", in order to rule that public prosecutors and assistant public prosecutors at Aligarh constitute a definite and identifiable category.

Further, the judgment of the Allahabad High Court in Tek Chand Gupta versus R. K. Karanjia and Ors. (1967) stated that the Rashtriya Swayam Sevak Sangh (RSS) having a constitution for itself establishes it as an association or collection of persons which is not indefinite and unidentifiable. This definition was affirmed by the Supreme Court in G. Narasimhan versus T. V. Chokkappa (1972), wherein it quashed complaints, against office bearers of certain newspapers including The Hindu, which alleged that newspaper reports on a resolution passed in a conference organised by the Dravida Kazhagam in 1971 was

defamatory. The Court said that the conference was not a determinate and identifiable body to be considered a "collection of persons".

In the light of these precedents, it would be interesting to see whether the apex court would view people bearing the surname Modi as an identifiable or definite class in order to be called a "group of persons".

'Purity in politics'

The categorical refusal of the Gujarat High Court to grant a stay on the conviction was also premised on the "need of the hour to have purity in politics". This observation seems to have gone against the view of the Kerala High Court which recently stayed the conviction of Mohammed Faizal, the MP of Lakshadweep, under Section 307 of the IPC (attempt to murder), after taking note of the representative nature of his office. The Court held that "on consideration of various legal and other circumstances and special features arising out of this case, this court is of the view that the case of the second petitioner [the MP] falls within the category of rare and exceptional circumstances. The ramifications of not suspending the conviction are enormous." Interestingly, the Supreme Court refused to stay the order of the Kerala High Court in Mr. Faizal's case when the UT administration came on appeal. The term of sentence imposed in this case was ten years rigorous imprisonment whereas in the defamation case, the sentence is for two years.

Relevant precedents

The concurrent views held by the Sessions Court and the Gujarat High Court have cast a shadow of uncertainty over the parliamentary membership of Mr. Gandhi. It is germane to note that the Supreme Court in a plethora of judgments had well chiselled the jurisprudence on suspending an order of conviction. A three Judge bench in Rama Narang versus Ramesh Narang & Ors. (1995) held that "in certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'."

Relying on this judgment, the Supreme Court in Navjot Singh Sidhu versus State Of Punjab & Anr (2007), suspended the order of conviction to

enable the cricketer turned politician to contest the election. Even in Lily Thomas versus Union of India (2013), through which Section 8 (4) of the Representation of People Act (1951) was struck down, the Supreme Court rebutted in explicit terms the concern that the disqualified legislator would become helpless by quoting from the Rama Narang judgment (1995) that the power to stay the order of conviction would remain unscathed.

However, the Supreme Court has been reluctant to stay convictions in corruption cases as was seen in State of Tamil Nadu versus A. Jaganathan (1996) and K.C. Sareen versus C.B.I., Chandigarh (2001) as the court felt that the convicted person in such cases should be kept under the disability of conviction. But these decisions are of no applicability to defamation cases which are non-cognisable, bailable and compoundable. Even the Representation of People Act, 1951, differentiates the gradients of criminality for incurring disqualification by classifying various categories of offences. The offence of defamation steps in only in cases of maximum sentence and, hence may deserve differential treatment.

What next?

The disqualified MP is reportedly approaching the Supreme Court challenging the order passed by the Gujarat High Court in the revision petition. When the High Court decides during a revisional stage a challenge against the appeal court order on an application during the pendency of the appeal, the Supreme Court usually does not interfere. But amalgamating the principles of law as declared by the Supreme Court in various cases, it is left to the top Court to grant indulgence to stay the conviction in this particular case on defamation and disqualification by employing its sweeping power to do substantive justice under Article 136. However, the final decision of the sessions court in the pending criminal appeal would hang like the sword of Damocles over the restored membership of Mr. Gandhi as an adverse decision puts him back to square one anytime afterwards.

The implication of this is long lasting as the conviction entails a six year disqualification from contesting the elections which will have grave ramifications.

It remains to be seen whether the apex court would view people bearing the surname Modi as an identifiable or definite class in order to be called a "group of persons".

ECONOMICS AND DEVELOPMENT

FPI INFUSE 30, 600 CR SO FAR IN JULY

Foreign portfolio investors (FPIs) have infused ₹30,600 Cr. into Indian equities so far in July 2023, after withdrawing a net of ₹50,200 Cr. in June. The latest inflow comes after a prolonged period of selling by FPIs, who have pulled out a net of ₹3.6 trillion from Indian equities since October 2022.

The inflow in July is being attributed to a number of factors, including the recent decline in oil prices, which has eased inflation concerns. The rupee

has also been relatively stable in recent weeks, which has made Indian equities more attractive to foreign investors. However, some analysts believe that the inflow is likely to be temporary, as FPIs are likely to remain cautious in the near term given the ongoing geopolitical tensions and the rising interest rates in the US.

CREDIT CARD DEFAULTS SURGE SHARPLY IN FY 2022-23; UP 30.5 % YOY AT ₹ 4, 073 CR.

The surge in credit card defaults in India in the fiscal year 2022-23 is a cause for concern, as it could lead to a decline in consumer spending and economic growth. The gross non-performing assets (GNPAs) of credit cards rose by 30.5% year-on-year to ₹4,073 Cr. in the fiscal year 2022-23. This is the highest level of GNPAs for credit cards in the last five years.

There are a number of reasons for the surge in credit card defaults. One reason is the rise in inflation, which has made it more difficult for people to repay their debts. Another reason is the economic slowdown, which has led to job losses and a decline in income.

BANKS IN INDIA ARE FACING STIFF COMPETITION FROM MUTUAL FUNDS IN MOBILIZING CAPITAL

Mutual funds have been able to attract more and more investors in recent years, as they offer a wider range of investment options and higher returns. As of March 2023, the assets under management (AUM) of mutual funds in India stood at ₹39.8 trillion. This is more than double the AUM of banks, which stood at ₹18.3 trillion in the same period.

There are a number of reasons why mutual funds have been able to attract more investors than banks.

First, mutual funds offer a wider range of investment options. Investors can choose from a variety of funds, including equity funds, debt funds, and balanced funds.

Second, mutual funds offer higher returns than banks. The average return of equity funds in India is around 12% per year, while the average return

of bank deposits is around 6% per year.

Third, mutual funds are more transparent than banks. Investors can easily see the performance of mutual funds, as they are required to disclose their performance on a regular basis.

The growth of mutual funds has been driven by a number of factors, including the rise of the middle class, the increasing awareness of financial products, and the availability of online investment platforms.

1. Banks need to innovate and offer new products and services to compete with mutual funds.
2. Banks also need to focus on improving their customer service and making it easier for investors to open and manage accounts.

MORE CASH AND LESS GRAIN

The PDS is a critical safety net for millions of people in India. The PDS provides subsidised food grains to people who cannot afford to buy them in the market. However, the PDS is becoming less effective, as people are increasingly preferring cash over grain.

There are a number of reasons why people are preferring cash over grain. One reason is that cash is more flexible. People can use cash to buy the food they want, when they want it. Grain, on the other hand, has to be stored and cooked, which can be inconvenient.

Another reason why people are preferring cash over grain is that the

quality of grain under the PDS is often poor. Grain is often infested with pests or mold, and it can be difficult to cook. Cash, on the other hand, is always of good quality.

The preference of cash over grains could lead to food insecurity for some people. A study by the National Institute of Public Finance and Policy that found that the number of people who prefer cash over grain under the PDS has increased by 20% in the last five years.

The government needs to improve the quality of grain and needs to make it easier for people to buy grain under the PDS.

JUNE SEES SPIKE IN HOUSEHOLDS TAKING UP NREGS WORK, POOR MONSOON ONE REASON

The number of households that took up work under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) in June 2023 increased by 50.4% compared to the previous month. This is the highest increase in the number of households taking up MGNREGS work in a single month since the scheme was launched in 2005.

The number of households that took up MGNREGS work in June 2023 was 3.03 Cr. The increase in the number of households taking up MGNREGS work was highest in Tamil Nadu, Andhra Pradesh, Rajasthan, Uttar Pradesh, and Bihar. The government has released ₹53,000 Cr. under the MGNREGS in the current financial year.

There are two main reasons for the spike in the number of households

taking up MGNREGS work in June. First, the monsoon has been poor in many parts of the country, which has led to a decline in agricultural activity. Second, the government has been releasing funds to states under the MGNREGS at a faster pace in recent months.

The increase in the number of households taking up MGNREGS work is a positive development, as it shows that the scheme is helping to provide employment to people in rural areas who are facing difficulties due to the poor monsoon. However, it is important to note that the scheme is not a long-term solution to the problem of rural unemployment. The government needs to take more steps to boost agricultural productivity and create more jobs in rural areas.

GOVT. REDUCES SUBSIDISED TOMATO PRICE TO ₹80 A KG

The Government has announced reduction of the subsidized price of tomatoes to ₹80 per kg from ₹90 per kg with immediate effect. The government has taken this step in response to the rising prices of tomatoes in the country. The price of tomatoes has been on the rise since last month, due to a number of factors, including a decline in production and an increase in demand. The subsidised price of tomatoes is being sold through two state-backed firms, NAFED and NCCF. The government has said that the reduced price will be available at over 500 outlets across the country.

The reduction in the subsidised price of tomatoes is expected to provide some relief to consumers. However, it is unclear how long the reduced price will be in effect. The government has said that it will continue to monitor the situation and take further action if necessary.

Here are some additional details about the subsidized price of tomatoes:

1. Available for a limited quantity of tomatoes only.
2. Not available in all parts of the country.
3. Discontinued if the market price of tomatoes falls below ₹80 per kg.

FINANCE MINISTER AT G 20

India will push the G-20 to raise the minimum tax share for multinational corporations (MNCs) to 21% from the current 15%. The move is part of a global effort to ensure that MNCs pay their fair share of taxes. The G-20 is a group of 20 major economies that meets regularly to discuss global economic issues. The group has been working on a proposal to raise the minimum tax share for MNCs since 2021.

India is one of the countries that has been pushing for a higher minimum tax share. The government believes that the current 15% rate is too low and that it allows MNCs to avoid paying their fair share of taxes. The government is also concerned that the current rate is not sustainable in the long term. As the global economy becomes more integrated, it is becoming easier for MNCs to shift profits to low-tax jurisdictions.

The government believes that raising the minimum tax share is a matter of fairness. It is also a matter of principle. The government believes that all countries should pay their fair share of taxes, including MNCs.

- The G-20 is expected to make a decision on the minimum tax share in October 2023.
- India is also pushing for the G-20 to agree on a global minimum corporate tax

rate.

- The government believes that a global minimum corporate tax rate would help to level the playing field for businesses and reduce tax avoidance.

India will launch a pilot project on tax and financial crime investigation from July 18, 2023. The project will be implemented by the National Academy of Direct Taxes (NADT) in collaboration with the Organisation for Economic Co-operation and Development (OECD). The project is being funded by the OECD and the Government of India. It is expected to run for two years. The project aims to build capacity among Indian tax officials to investigate tax and financial crimes. It will focus on three areas:

- Data analytics: The project will train Indian tax officials on how to use data analytics to identify and investigate tax and financial crimes.
- International cooperation: The project will also focus on building international cooperation between Indian tax officials and their counterparts in other countries.
- Public awareness: The project will also raise public awareness about tax and financial crimes.

INTERNATIONAL RELATIONS

SOMETHING SPECIAL

India's relationship with France is unique and multidimensional

Celebrating 25 years of the India-France strategic partnership was at the top of the agenda during Prime Minister Narendra Modi's two-day visit to France and his meetings with French President Emmanuel Macron last week, which ended with a number of agreements and a slew of defence deals.

Mr. Modi's visit, just months before Mr. Macron is in Delhi for the G-20 summit, was a special one, as he was invited to be the chief guest at the Bastille Day parade — it saw Indian tri-service participation — and was the second time that an Indian Prime Minister has been extended the invitation (Manmohan Singh was

the first in 2009).

Horizon 2047

- Chief among the agreements was the strategic road map for the next 25 years — "Horizon 2047" — which includes cooperation in defence, space, nuclear energy, climate change and green transitions as well as education and people-to-people ties.
- Another road map was released on how to cooperate further in the Indo-Pacific region, which includes military and naval exchanges and a trilateral

development fund to help countries in the region.

- There were also the decisions, in principle, to buy 26 more Rafale fighter jets off-the-shelf (Rafale-M), this time for the Indian Navy; three more Scorpene submarines in continuation to the purchases of 2008, and an agreement between Hindustan Aeronautics Limited and Safran for helicopter engines.
- In the broader picture, the France-India strategic relationship is built on a respect for each other's strategic autonomy. France has remained steadfast in its refusal to comment on India's internal affairs or its foreign policy choices.
- While France has taken a leading role in the western pushback to Russia's war in Ukraine, it has not joined other western countries in publicly exhorting India to change its stand.

Support to Indian Nuclear Programme

- In 1974, and in 1998, France did not join the western push to sanction India

INDIA-FRANCE PARTNERSHIP IN CO-PRODUCTION

The Indian government is expected to give the green light for the development of a new multi-role helicopter (IMRH) by early 2024. The helicopter will be jointly developed by Hindustan Aeronautics Limited (HAL) and Safran Helicopter Engines, and will be designed and manufactured in India. The IMRH is expected to have a maximum takeoff weight of 13 tonnes and will be capable of carrying up to 30 troops or 12 tons of cargo. It will be powered by two Safran TM333-100 engines, and will have a range of over 1,000 kilometers. The IMRH is intended to replace the HAL Dhruv and the Mil Mi-17 helicopters in the Indian Air Force and the Indian Army. It is also expected to be exported to other countries.

In addition to the IMRH, HAL and Safran have also announced plans to set up a joint venture in Bengaluru to design and manufacture helicopter engines. The joint venture will be India's first engine design and manufacturing facility, and will be dedicated to the development of engines for the IMRH and other helicopter programs. The announcement of the IMRH and the joint venture with Safran is a significant step forward for HAL's helicopter program. The IMRH will be a major addition to the Indian Air Force and the Indian Army, and will help to meet the growing demand for helicopters in India. The joint venture with Safran will also help to strengthen India's helicopter manufacturing capabilities.

The Scorpene submarines are being built in India by Mazagon Dock Shipbuilders Limited (MDL) under a technology transfer agreement with France's Naval Group. The deal for the submarines was signed in 2005, but the project

for its nuclear tests either; it even stepped in with uranium supplies to power the Tarapur reactors.

- Mr. Modi's visit was also at around the same time that the European Parliament decided to adopt a resolution criticising his government for the violence in Manipur and alleged violations of human rights and freedom of religion issues. Yet, none of these issues was discussed or brought up.
- India too, made no mention of the violence in France after the killing of a teenager belonging to the Algerian immigrant community.
- Further, neither country has any desire to pull the other into a coalition, grouping or alliance the other is a part of, and both seem content with the success in forging the relationship bilaterally. In this and many other ways, their relationship has proven itself to be different from the other major partnerships that India has built across the world, explaining both the symbolism and the substance of the Prime Minister's visit.

has been delayed due to a number of factors.

The combat jet engine deal is between Hindustan Aeronautics Limited (HAL) and Safran Aircraft Engines. The deal is for the development and production of an Indian-made fighter jet engine. The deal was announced in 2021, but it is not yet clear when the engine will be ready for production.

1. **Defence:** India and France are major defence partners, and they have been cooperating on a number of projects, including the development of the Rafale fighter jet and the Scorpene submarine. The signing of a new defence cooperation roadmap, which will deepen cooperation between the two countries in areas such as defence manufacturing, joint exercises, and intelligence sharing. The new defence cooperation roadmap includes a commitment to jointly develop new weapons and systems, and to increase joint exercises.
2. **Technology:** India and France are also cooperating in the field of technology, and they are working together on a number of projects, including the development of artificial intelligence and quantum computing. The announcement of a new initiative to promote cooperation in the field of critical technologies, such as artificial intelligence, quantum computing, and space.
3. **Trade:** India and France are also major trading partners, and they have been working to increase trade between the two countries.

CHINA, RUSSIA TO KICK OFF AIR, NAVY DRILLS IN THE EAST ASIA

China and Russia are set to kick off a joint air and naval drill in the Sea of Japan, codenamed "Northern/Interaction-2023" on Monday, July 18, 2023. The drill will involve the participation of a number of ships and aircraft from the two countries, including the Chinese aircraft carrier Liaoning. The drill is seen as a sign of the growing military cooperation between China and Russia.

The drill comes at a time of heightened tensions in the Indo-Pacific region, as China continues to assert its claims in the South China Sea. The drill is also seen as a message to the United States and its allies in the region. The United States has expressed concern about the drill, and has said that it will be monitoring the situation closely. The US Navy has said that it will deploy ships

and aircraft to the region to "ensure freedom of navigation and overflight".

The drill is the latest in a series of joint exercises between China and Russia. The two countries have been conducting joint military exercises since 2005. The exercises have become more frequent in recent years, and have included the participation of more advanced weapons and equipment. The joint exercises between China and Russia are seen as a way for the two countries to improve their military coordination and to send a message to the United States and its allies. The exercises are also seen as a way for China to test its new weapons and equipment in a real-world setting.

KURTHA BAIJAPURA SECTION OF THE RAILLINE LINKING IN INDIA, NEPAL BEGINS OPERATION

The 18.5-kilometer Kurtha Baijapura section of the Jaynagar-Bardibas railway line was inaugurated by Indian Prime Minister Narendra Modi and Nepali Prime Minister Sher Bahadur Deuba on July 16, 2023. The Jaynagar-Bardibas railway line is a 68.72-kilometer line that is being built by the Indian Railways. The line is expected to be completed in 2025. Once completed, the line will provide a direct rail link between India and Nepal's capital city, Kathmandu.

The operation of the Kurtha Baijapura section is a significant milestone in the construction of the Jaynagar-Bardibas railway line. The operation of the Kurtha Baijapura section is also expected to boost trade and tourism between India and Nepal. The line will make it easier for people and goods to travel between the two countries, which will help to improve economic ties.

UK FTA: TEMPLATE FOR THE OTHER TRADE PACTS IN MIND, INDIA MOVES CAUTIOUSLY

India is moving cautiously in its negotiations with the United Kingdom for a Free Trade Agreement (FTA), as it wants to use the deal as a template for future trade pacts with other countries. The Indian government is concerned that if it agrees to too many concessions in the UK FTA, it will set a precedent for

other countries and make it more difficult to negotiate favourable deals in the future.

As a result, India is taking a tough stance in the negotiations, and is refusing to make any major concessions. This has led to some tensions between

the two sides, but India is determined to get a good deal. The UK FTA is seen as a major opportunity for India, as it could boost trade between the two countries and help to attract investment from the UK. However, India is also aware of the

risks involved, and is not willing to sacrifice its long-term interests in order to get a quick deal.

ECOLOGY AND ENVIRONMENT

PANEL WANTS KUNO CHEETAHS TO UNDERGO MEDICAL REVIEW

A panel of experts headed by Dr. Yadvendradev V. Jhala, a wildlife conservationist has recommended that the cheetahs that were recently reintroduced to Kuno National Park in Madhya Pradesh should undergo a medical review. The panel has also recommended that the park should be fenced to prevent the cheetahs from straying out.

The panel was set up by the National Tiger Conservation Authority (NTCA) to assess the health of the cheetahs and to make recommendations for their management. The panel found that the cheetahs were in good health, but that they should undergo a medical review to rule out any underlying health

conditions.

The panel also found that the park was not adequately fenced, which could allow the cheetahs to stray out and be injured or killed by humans or other animals. The panel has recommended that the park be fenced to prevent this from happening.

The NTCA has accepted the recommendations of the panel and has directed the Madhya Pradesh government to implement them. The government has said that it will take steps to fence the park and to conduct a medical review of the cheetahs.

SOCIAL JUSTICE

AGE OF CONSENT FOR DATA PROTECTION: HOW THE DEFINITION OF A CHILD HAS CHANGED OVER THE YEARS

Lowering the age of consent under the 2022 data protection Bill had been a key ask of the industry, especially social media companies, as a hard-coded age of consent would have meant business disruptions for them.

The final change in the Bill that is headed to Parliament marks a series of twists and turns as a number of stakeholders attempted to prescribe what the age of children should be in India's data protection law.

Verifiably safe

The upcoming data protection Bill could empower the Central government to lower the age of consent from 18, for accessing Internet services without parental oversight. It could also exempt certain companies from adhering to additional obligations for protecting kids' privacy if they can process their data in a "verifiably safe" manner.

This marks a key departure from the previous data protection Bill that was floated in 2022 where the threshold of children's age was hard-coded at 18 years. The change, however, is in line with data protection regulations in the Western world, with regions like the European Union and the United States prescribing a lower age of consent.

Justice BN Srikrishna committee report:

The committee, which was set up by the Centre months before the Supreme Court's landmark decision of upholding privacy as a fundamental right, submitted its report to the government in 2018.

- The report relied on the definition of majority under the Contract Act where the age of majority is 18 years and recommended that for individuals under 18 years, entities will have to seek parental consent.
- However, the report also flagged that "from the perspective of the full, autonomous development of the child, the age of 18 may appear too high". It said were the age of consent for contract to reduce, a similar amendment may be effected here too.
- The Justice Srikrishna committee report served as the precursor to the Personal Data Protection Bill, 2019 (PDP Bill, 2019) which retained its recommendation and defined a child as an individual under the age of 18.

Joint Committee of Parliament recommends lowering the age of consent: The PDP Bill, 2019 was referred to a Joint Committee of Parliament, which in late December 2021 came up with its final set of recommendations and proposed that the definition of children should be restricted to 13/14/16 years of age and be reduced from 18 years.

Digital Personal Data Protection Bill, 2022: After the Centre withdrew the earlier version of the data protection Bill from Parliament in August 2022, the IT Ministry came up with a new draft, called the Digital Personal Data Protection Bill, 2022, last November, under which children were defined as those under 18 years of age.

Final change:

Under the data protection Bill that received Cabinet's nod earlier this month and will be tabled in Parliament's Monsoon session, the definition of a child is understood to have been changed to an "individual who has not completed the age of eighteen years or such lower age as the Central

Government may notify", The Indian Express had earlier reported.

Certain entities that deal in collecting and processing children's data can also be exempted from seeking parental consent if they can ensure that the "processing of personal data of children is done in a manner that is verifiably safe".

While the Central government can issue such exemptions to entities through a notification, the Women and Child Development Ministry, along with the IT Ministry, is expected to assess a platform's privacy standards for children for granting them exceptions.

In data protection legislation globally, the definition of children varies from 13 to 16 years of age. In some regions like Australia, there is currently no set age for defining a child, however, a recommendation has been made in the country to set the age at 18 years.

EU's General Data Protection Regulation (GDPR): Under the GDPR, the age of consent has been kept at 16, but it allows member states to lower it to as much as 13.

The law affords specific protection to children's personal data since they "may be less aware of the risks, consequences and safeguards concerned and their rights". Such protections apply to the use of the personal data of children for the purposes of marketing or user profiles.

The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child, as per the GDPR.

USA's Children's Online Privacy Protection Act (COPPA): The COPPA defines children as being under 13 years of age – and parental consent is needed for processing the personal data of those under that age. The law requires entities to provide notice to parents and obtain verifiable parental consent prior to collecting, using, or disclosing personal information of children below the age of 13.

It also prohibits entities from conditioning children's participation in activities on the collection of more personal information than is "reasonably necessary" to participate in such activities.

Australia's Privacy Act, 1988: It protects an individual's personal information regardless of their age, and doesn't specify an age after which an individual can make their own privacy decision. For their consent to be valid, an individual must have 'capacity to consent'.

The law says that an organisation handling the personal information of an individual under the age of 18 must decide if the individual has the capacity to consent on a case-by-case basis. In Australian jurisprudence, an individual under the age of 18 has the capacity to consent if they have the maturity to understand what's being proposed. If they lack maturity it may be appropriate for a parent or guardian to consent on their behalf.

However, under a review of the Privacy Act, 1988 by the Attorney-General of Australia, a recommendation has been made to clearly define the age of a child as an individual under 18 years.

POLITY AND GOVERNANCE

SC COLLEGIUM'S QUIET TRANSPARENCY IS DRIVING CHANGE

- The Supreme Court Collegium under Chief Justice of India D.Y. Chandrachud has quietly and transparently streamlined the appointment process of judges to the constitutional courts while adding a deft mix of merit and seniority in the judicial ranks through a selection procedure which involves "meaningful discussion on and assessment of candidates' judicial acumen".

Origin of Collegium system**First Judges Case (1981):**

It declared that the "primacy" of the CJI's (Chief Justice of India) recommendation on judicial appointments and transfers can be refused for "cogent reasons."

The ruling gave the Executive primacy over the Judiciary in judicial appointments for the next 12 years.

Second Judges Case (1993):

SC introduced the Collegium system, holding that "consultation" really meant "concurrence".

It added that it was not the CJI's individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the SC.

Third Judges Case (1998):

SC on the President's reference (Article 143) expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.

- The once-constant tide of barbs from the government about the "opacity" of the collegium system has died off with the change of guard at the top in the Law Ministry. Recommendations made by the collegium for judicial appointment are now notified within days by the government.
- Since early this year, the collegium's resolutions have embraced transparency. They have publicly laid bare the requirements for candidates in the zone of consideration for appointments to the top court and the High Courts.

Quality of judgments

- Of primary concern for the collegium is the quality of judgments of the candidates. For this, their judgments are circulated among the members of the collegium, well in advance. The Centre for Research & Planning of the court also prepares a compilation of "relevant background material to assist the collegium".
- There is also a Judgment Evaluation Committee which goes through the judicial work of the candidates with a fine-tooth comb. The judgments are graded, with the very best receiving an "outstanding" grade. This procedure of circulating the judgments of prospective candidates and making an objective assessment of their relative merit was introduced for the first time at a collegium meeting held on September 26 last year.
- While proposing Justices Ujjal Bhuyan and S. Venkatanarayana Bhatti for Supreme Court appointments on July 5, the collegium listed out the three

basic criteria which guide its selection process to the top court.

- **Qualifications for Appointment as a Judge:**

According to Article 124(3) of the Constitution, a person can be appointed as a judge of the Supreme Court if he or she:

- A person must be a citizen of India.
- Must have served as a judge of a High Court for at least five years or two such courts in succession.
- Alternatively, must have been an advocate of a High Court for at least ten years or two or more such courts in succession.
- Must be a distinguished jurist in the opinion of the president.
- "While recommending appointments to the Supreme Court, the collegium has taken into consideration the following aspects: the seniority of Chief Justices and senior puisne Judges in their respective parent High Courts as well as overall seniority of the High Court judges; The merit, performance and integrity of the judges under consideration; the need to ensure diversity and inclusion in the Supreme Court," the July 5 resolution said.
- The collegium further explained that "diversity and inclusion" referred to the "representation of High Courts, which are not represented or are inadequately represented, in the Supreme Court; appointment of persons from marginalised and backward segments of society; gender diversity; and representation of minorities".
- The same criteria were followed recently while proposing Chief Justices to the High Courts of Kerala, Orissa, Manipur, Andhra Pradesh, Bombay, Telangana and Gujarat.

Fair Representation

- The Collegium made it clear that its selection of Chief Justices to these High Courts was purely based on the objective criteria in Paragraph 3 of the Memorandum of Procedure (MoP) relating to appointment of Chief Justices of High Courts. "A fair representation shall be given to various High Courts for selection of Chief Justices. For purposes of such selection, inter-se seniority of puisne Judges will be reckoned on the basis of their seniority in their own High Court. The consideration for appointment of Chief Justices shall be based on the criterion of seniority subject to merit and integrity," the MoP provided.

Gender diversity

- The Collegium's proposal to appoint Allahabad High Court judge Justice Sunita Agarwal as the Chief Justice of the High Court of Gujarat was a step towards the goal of gender diversity in the High Courts. "She would be the only woman Chief Justice of a High Court as presently there is no woman among the Chief Justices of the High Courts," it noted.
- The objectivity was also apparent in its decision not to bow to the request made by three High Court judges — Justices Guaranth Kanth, Dinesh Kumar Singh and Manoj Bajaj — against their out-of-State transfers.
- All three were told that their transfers were proposed to ensure the "better administration of justice". The government too backed the Collegium by notifying the transfer of the three judges within days.

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