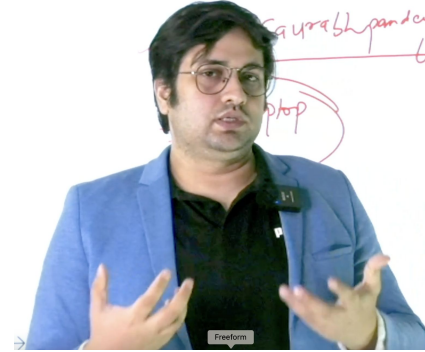


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- **Supreme Court Ruling on Section 6A of the Citizenship Act**
  - **Universal Basic Income (UBI)**
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# SC upholds Section 6A of Citizenship Act as valid

Constitution Bench gives the ruling in a 4:1 majority judgment; the Section says people from Bangladesh who arrived in Assam prior to January 1, 1966, would be deemed to be Indian citizens; however incessant migration from Bangladesh is indeed a burden on Assam and large part of the fault was the govt's failure to act timely, says Justice Kant

**Krishnadas Rajagopal**  
NEW DELHI

**A** Constitution Bench of the Supreme Court, in a 4:1 majority judgment on Thursday, upheld the constitutionality of Section 6A of the Citizenship Act, 1955, which permits immigrants from Bangladesh residing in Assam to secure Indian citizenship. The court held it as a valid piece of legislation aligned to the preambular value of fraternity.

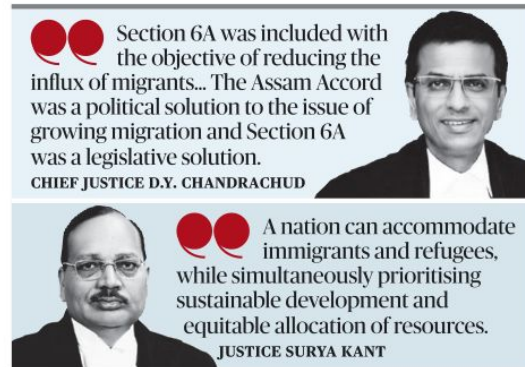
The principle of fraternity cannot be selectively applied to one section living in Assam while another lot are labelled "illegal immigrants", Justice Surya Kant, who authored the lead opinion for the five-judge Bench, observed.

"Our reading of the Constitution and precedents is that fraternity requires people of different backgrounds and social circumstances to 'live and let

live'... When faced with the dilemma of disenfranchising millions or safeguarding a community's endogenous way of life, this court would certainly be compelled by the principles of fraternity to prioritise the former," he observed.

Section 6A, which traces its roots to the political solution of Assam Accord of 1985, mandates that immigrants who entered Assam from Bangladesh prior to January 1, 1966 would be deemed to be Indian citizens. Those who entered the State between January 1, 1966 and March 25, 1971 would be conferred citizenship based on the fulfilment of specific procedures and conditions. The Section, however barred citizenship to those who entered Assam after March 25, 1971.

Justice Kant, in his opinion shared with Justices M.M. Sundresh and Manoj Misra, however said incessant



sant migration from Bangladesh was indeed a burden on Assam. A large part of the fault lay with the government's failure to timely detect and deport the post-1971 immigrants from Bangladesh, he said.

The court found the statutory machinery and Tribunals tasked with the identification and detection of illegal immigrants or foreigners in Assam inadequate and disproportionate

to the requirement of giving time-bound effect to the legislative object of Section 6A read with the Immigrants (Expulsion from 185 Assam) Act, 1950, the Foreigners Act, 1946, the Foreigners (Tribunals) Order, 1964, the Passport (Entry into India) Act, 1920 and the Passport Act, 1967.

"The implementation of immigration and citizenship legislation cannot be left to the mere wish and

discretion of the authorities, necessitating constant monitoring by this court," Justice Kant highlighted.

The Constitution Bench directed the issue to be placed before the Chief Justice of India for constituting a Bench to monitor the implementation of these laws in question in Assam.

## 'A balancing act'

Chief Justice of India D.Y. Chandrachud, in a separate opinion backing Justice Kant, said Section 6A was Parliament's balancing act between its humanitarian view towards immigrants from Bangladesh and the impact of the huge influx on Assam's economic and cultural resources.

The Chief Justice agreed that the cut-off date of March 25, 1971 was reasonable. He reminded that the Pakistani Army had launched Operation Searchlight to curb the Bengali nationalist movement in

East Pakistan on March 26, 1971. The immigrants from Bangladesh who entered India before the cut-off date were victims of the partition towards whom India had a liberal policy, while those who came after the date were taken in as refugees of the war.

The majority on the Bench held that Section 6A did not violate citizenship provisions of Articles 6 and 7 of the Constitution.

The court was hearing petitions filed by NGOs like Assam Public Works and the Assam Sanmilita Mahasangha, which condemned Section 6A for the huge inflow of illegal immigration.

Justice J.B. Pardiwala, in his lone dissenting opinion, declared Section 6A unconstitutional with prospective effect.

Chief Justice Chandrachud dismissed the notion that the mere presence of different ethnic groups in a State would infringe the

right to conserve the language and culture of one group. "Section 6A does not violate Article 29(1) of the Constitution. Article 29(1) guarantees the right to take steps to protect the culture, language and script of a section of citizens. The petitioners have been unable to prove that the ability of the Assamese people to take steps to protect their culture is violated by the provisions of Section 6A," the CJI noted.

Justice Kant argued that sustainable development and population growth in a State could coexist harmoniously and need not be mutually exclusive.

"A nation can accommodate immigrants and refugees, while simultaneously prioritising sustainable development and equitable allocation of resources," he observed.

**MORE REPORTS ON**

» PAGE 4

# **Topic → Supreme Court Ruling on Section 6A of the Citizenship Act**



## **Key Highlights**



**Supreme Court Ruling:** A Constitution Bench of the Supreme Court upheld the constitutionality of Section 6A of the Citizenship Act, 1955, with a 4:1 majority.



**Citizenship for Immigrants:** Section 6A allows immigrants from Bangladesh residing in Assam before January 1, 1966, to secure Indian citizenship, while those entering between January 1, 1966, and March 25, 1971, can obtain citizenship under specific conditions.



**Principle of Fraternity:** Justice Surya Kant emphasized that the principle of fraternity should apply universally, not selectively, to different groups in Assam.



**Historical Context:** The ruling is rooted in the Assam Accord of 1985, which aimed to address the issue of illegal immigration and its impact on Assam's resources.

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## \_Key Highlights

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**Fraternity Principle:** Justice Surya Kant emphasized the universal application of the fraternity principle across all groups in Assam.




**Constitutional Interpretation:** The court's interpretation suggests that fraternity necessitates coexistence among diverse backgrounds, prioritizing disenfranchised rights over community preservation.





**Section 6A Overview:** This section of the Assam Accord (1985) grants citizenship to immigrants from Bangladesh who entered Assam before January 1, 1966, and sets conditions for those arriving between 1966 and March 25, 1971.


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 **Post-1971 Immigration:** Citizenship is denied to those entering Assam after March 25, 1971, underscoring the issue of illegal immigration.

 **Government Accountability:** Justice Kant criticized the government's failure to identify and deport post-1971 immigrants, attributing migration burdens to this negligence.

 **Inadequate Legal Framework:** The court found the legal mechanisms for identifying illegal immigrants in Assam insufficient and disproportionate to the situation's needs.

 **Judicial Oversight:** A call for a monitoring Bench by the Chief Justice of India to ensure effective implementation of immigration and citizenship laws in Assam.

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**Inadequate Immigration Mechanism:** The court criticized the existing statutory machinery for identifying illegal immigrants as inadequate and called for better monitoring and implementation of immigration laws.



**Balancing Humanitarian Concerns:** Chief Justice D.Y. Chandrachud noted that Section 6A represents a balance between humanitarian considerations for immigrants and the economic and cultural impact on Assam.



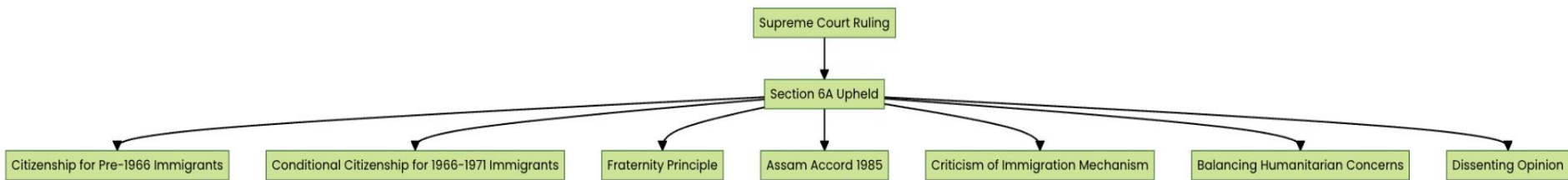
**Dissenting Opinion:** Justice J.B. Pardiwala dissented, declaring Section 6A unconstitutional with prospective effect, highlighting concerns over cultural preservation.

**Summary** The Supreme Court upheld Section 6A of the Citizenship Act, affirming citizenship for certain Bangladeshi immigrants in Assam while emphasizing the need for better immigration enforcement and balancing humanitarian and cultural concerns.

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## Conceptual Overview:



# A modified UBI policy may be more feasible



**T**he idea of a Universal Basic Income (UBI) keeps surfacing from time to time. A recent report by the International Labour Organization talks about how jobs growth has been lagging globally due to automation and Artificial Intelligence, and notes the massive problem of youth unemployment in India. The phenomenon of jobless growth, where productivity rises but job creation lags and contributes to the alarming trend in inequality, has rekindled interest in a UBI as a component of a social safety net across the world.

There was a fair bit of discussion surrounding UBI in India a few years ago, with scholars and policymakers debating whether it is worth replacing some inefficient welfare schemes with direct income transfers to the poor. The idea gained significant attention after the 2016-17 Economic Survey of India recommended considering UBI as a potential policy. It was argued that investments in the JAM (Jan-Dhan, Aadhaar, Mobile) infrastructure have also made it feasible to implement direct benefit transfers (DBTs) to beneficiary bank accounts.

## A UBI and modifications

Whether it is a tool to deal with unemployment or with poverty – and the two are not unrelated – a question that often comes up is this: should India adopt some version of UBI to deal with these challenges?

Now, a policy can be debated in terms of feasibility and desirability. Something that is feasible may not be the most desirable policy as one may have different policy priorities. The argument that we should have policies to boost employment growth or deal with the slack demand for mass consumption goods that comes with rising unemployment or that we need universal basic services are all valid points. But as critiques of a UBI, they are misplaced, as at best, it is a policy to help people cope with the consequences of unemployment. Policies need to be evaluated with respect to the specific problems that they are designed to address, which in turn correspond to specific social objectives. For example, investing in better transportation is a great policy to improve productivity and mobility, but it is not fair to criticise it as it will not directly deal with poverty. So, a UBI should be evaluated as a safety net policy.

At the same time, something that is desirable may not be feasible from a budgetary point of view. Even if one were to agree that a UBI is indeed desirable as a social safety net policy, it may not be feasible given budgetary constraints. The real question is this: is a modified and less ambitious version of a UBI worth exploring?

In this context, some terminological confusion prevails. It might appear that some forms of a UBI already exist in India, such as cash transfer schemes for farmers and women. While these are



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cash transfer schemes, a UBI, by definition, must be universal, i.e., not targeted to any specific group. A comparison with other forms of safety net policies is fair, and indeed necessary. These could be policies that are targeted to specific demographic groups such as women or the elderly, or those that are contingent on certain socio-economic criteria being met (farmers, the unemployed, the poor), or those that are in-kind rather than cash (the Public Distribution System) or those that are conditional on being willing to work (Mahatma Gandhi National Rural Employment Guarantee Scheme or MGNREGS) or sending children to school (mid-day meals).

For a given budget devoted to direct transfer schemes or social safety net policies, the choices are determined by various considerations. Is the goal to provide a safety net or minimum consumption support or long-term poverty alleviation? Are certain groups more vulnerable and require more assistance? Is it a remote rural area where in-kind assistance would be more helpful to the poor? Does limited state capacity mean inclusion and exclusion errors make means-tested programmes not very effective to target the poor, or, in addition, be subject to bureaucratic delays, glitches and corruption?

## State and central schemes

In recent years, India has already implemented income transfer schemes as part of its anti-poverty strategies, especially in the agriculture sector. In early 2018, Telangana launched the Rythu Bandhu Scheme (RBS), which gave farmers unconditional payments of ₹4,000 per acre. This approach was soon replicated at both the State level (the KALIA or Krushak Assistance for Livelihood and Income Augmentation programme in Odisha), and at the national level (the Pradhan Mantri Kisan Samman Nidhi Yojana, or PM-KISAN). The PM-KISAN, of 2018-19, initially provided ₹6,000 per year to small landholding farmers, but was later expanded to cover all farmers, excluding income-taxpayers and those not engaged in farming. By 2020-21, the scheme aimed to cover around 10 crore farming households, with an estimated cost of ₹75,000 crore, roughly 0.4% of GDP.

Despite the programme's scale and relative success, issues such as inclusion and exclusion errors persist, mainly due to logistical challenges such as Aadhaar verification and rejections by banks. It is to overcome limitations such as these that the proposal to make them universal, covering all citizens, has been proposed.

Universal income transfers offer several advantages. They reduce administrative costs associated with targeting and minimise exclusion errors. Since the transfers are universal, fewer intermediaries are involved, lowering the chances of leakage. Universal transfers also avoid work disincentives often associated with targeted programmes.

A common reaction to such a proposal is to question why the wealthy should also receive a basic income. However, this viewpoint misunderstands how tax and benefit systems operate. In any advanced economy, individuals pay taxes and receive some form of government support, such as child benefits, depending on their circumstances. What ultimately matters is their net income. Similarly, wealthier individuals would pay far more in taxes than the amount they would receive from a UBI.

## A possible scheme

However, where the case against a UBI scheme in India has validity is financial feasibility. UBI proposals often suggest large transfers, amounting to 3.5%-11% of GDP, which would either require cutting other anti-poverty programmes or drastically raising taxes. A more feasible approach would be to adopt a limited universal income transfer scheme. This writer, with economist Karthik Muralidharan, has explored such a policy that is pegged at 1% of GDP per capita. This would provide approximately ₹144 per month to every citizen (or roughly ₹500 a month a household), which works out to be similar to that of PM-KISAN. It can be implemented simply by roughly doubling the budget for PM-KISAN and making it universal, which means it would reach not only farmers but also landless labourers, who are often poorer. If one thinks the amount is too little, recall that the Tendulkar poverty line, at 2022-23 prices is around ₹1,500 a month in rural areas and ₹1,850 in urban areas – or an average of ₹1,600.

This approach could also simplify implementation by reducing eligibility verification costs. However, there are still logistical challenges such as ensuring access to cash-out points (COPs), minimising network and biometric authentication failures, and addressing issues with electronic payment devices. These last-mile delivery problems need to be addressed to ensure the success of universal income transfers in India.

Given the fiscal constraints that State and central governments face, it is natural to be sceptical of new policies when other policies that are somewhat similar are already in place. But in my view, having a modified UBI policy, as described above, as a base to which other transfer policies can be added, as and when appropriate (targeted at women), and feasible is a good model. For example, the MGNREGS provides 100 days of employment but may exclude those unable to work, such as the elderly or the disabled. Combining MGNREGS with a modified UBI scheme could ensure comprehensive coverage for different vulnerable groups. The COVID-19 pandemic underscored the point that income and in-kind transfers are complementary. For example, income is critical during supply chain disruptions, and food access is essential when people lack purchasing power.

As a core issue is financial feasibility, what may work best in India is using a modified policy as a base to which other transfer policies can be added as and when appropriate

# Topic→Universal Basic Income (UBI)

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## Overview of UBI

Definition: A policy where all citizens receive a regular, unconditional sum of money from the government. 💰

Purpose: To address issues like poverty and unemployment, especially in the context of automation and jobless growth. 📈

## Key Themes of Discussion

### Global Context


Job Growth Issues: Automation and AI contribute to job scarcity. 🤖

Youth Unemployment in India: A significant challenge that needs to be addressed. 🧒

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## Policy Debates in India

Replacement of Welfare Schemes: Discussion on replacing inefficient welfare programs with UBI. 

Feasibility vs. Desirability: UBI may be desirable but faces budgetary constraints. 

## Components of UBI

Direct Income Transfers: A shift from targeted welfare to universal income. 

Existing Income Transfer Schemes: Current programs such as PM-KISAN and their limitations. 

---



# — Arguments For and Against UBI



## Pros:

Reduces Administrative Costs: Fewer intermediaries involved. 💰

Minimizes Inclusion Errors: Universal coverage avoids targeting issues. 🚫

## Cons:

Financial Feasibility: Large transfers may not be sustainable. 📄

Criticism of Universal Benefits: Concerns about wealthier individuals receiving benefits. 🙋


## Implementation Challenges


**Logistical Issues:** Ensuring access to cash-out points and electronic payment systems. 🏛️

**State Capacity:** Addressing bureaucratic delays and corruption. 🏛️


## \_\_ Possible Models

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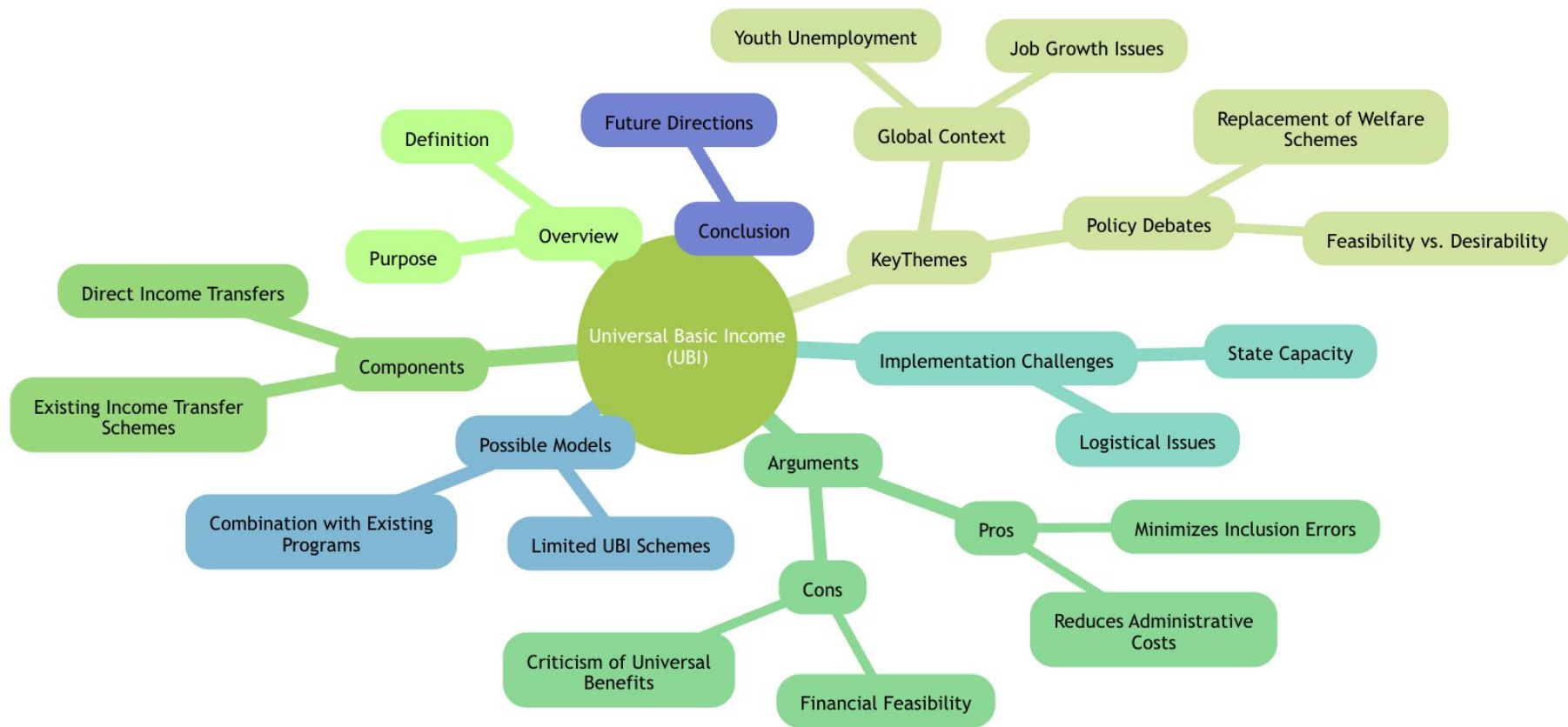
**Limited UBI Schemes:** Exploring modified UBI models pegged at lower GDP percentages. 

**Combination with Existing Programs:** Merging UBI with other safety net policies for comprehensive coverage. 

## Conclusion

**Future Directions:** Exploring modified UBI as a potential safety net for vulnerable populations. 

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# India's SDG focus and its human development issues



**O**n September 9-10, 2023, New Delhi hosted the G-20 Summit, which resolved to accelerate the full and effective implementation of the UN Agenda 2030 for Sustainable Development. On September 18-19, 2023, an "SDG Summit" was convened at the United Nations headquarters to follow up and review the implementation of the Agenda and the progress of the 17 Sustainable Development Goals (SDGs). A "Summit of the Future" took place on September 22-23, 2024, at the UN headquarters to build upon the SDG Summit 2023 and its commitments by member nations.

In this context, examining India's progress in human development since 1990, based on the UNDP's latest Human Development Report (HDR), is valid. As said by Nobel laureate Amartya Sen in his book, *Development as Freedom*, 'development is a process of expanding the real freedoms that people enjoy'. In his 'capability approach', the basic concern of human development is 'our capability to lead the kind of lives we have reason to value'. Freedom from hunger and ill-health on the one hand and gender and income equality, and access to quality education on the other hand lead to the achievement of human development, and, consequently, to sustainable development.

## Development and the SDGs

The Human Development Index (HDI) developed by the UNDP has three dimensions: long and healthy life (measured by life expectancy at birth); knowledge (expected years of schooling and mean years of schooling), and a decent standard of living (income per capita). All the three dimensions are much related to some of the key SDGs: SDG-3 (good health); SDG-4 (quality education); SDG-5 (gender equality); SDG-8 (decent work) and SDG-10 (reduced inequality). Clearly, countries aspiring to achieve sustainable



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Professor, ICFAI  
School of Social  
Sciences, Hyderabad

Countries that  
aspire to  
achieve  
sustainable  
development  
need to take  
steps to boost  
human  
development

development need to take appropriate measures to boost human development.

The HDR 2023-24 places India in the 'medium human development category' with a human development index (HDI) value of 0.644. India ranks 134 out of 193 countries. The HDI value was stagnant in 2019-20, at 0.638, and fell to 0.633 in 2021. It improved to 0.644 in 2022. In this report, some of India's neighbouring countries have better HDI ranks – Malaysia (63); Thailand (66); China (75); Sri Lanka (78); Indonesia (112); Bhutan (125), and Bangladesh (129).

The HDR also presents interpolated consistent data which can be used to compare HDI values across years and countries. India saw its HDI value increase by 48.4%, from 0.434 in 1990 to 0.644 in 2022. As for HDI rankings, during 2015-2022, India improved by four ranks, while neighbouring countries such as Bangladesh and Bhutan improved by 12 and 10 ranks, respectively. China improved by 18 ranks. India's human development initiatives lagged behind during 2015-22. One of the reasons for the slow growth is the COVID-19 pandemic and its impact on dimensions of human development such as education and income.

## Gender gaps

The HDR also presents the Gender Development Index (GDI) for 193 countries. It measures disparities in human development by gender. The report contains HDI values estimated separately for women and men, the ratio of which is the GDI value. The closer the ratio is to one, the lesser the gap there is between women and men.

Among the 42 'medium human development countries' to which India belongs, there are only seven with low equality in HDI achievements between women and men. These countries, with absolute deviation from gender parity of more than 10%, are India, Bangladesh, Nepal, Uganda,

Morocco, the Syrian Arab Republic, and Kiribati.

India has one of the largest gender gaps in the Labour Force Participation Rate (LFPR) a 47.8 percent points difference between women (28.3%) and men (76.1%). Female labour force participation rate in India is very low when compared to many countries, more so when one compares it with India's neighbouring countries where in China it is 53.6 %, Bhutan 53.5 %, and Bangladesh 39.2%.

In the latest Periodic Labour Force Survey (PLFS) -2022-23, published by the Ministry of Statistics and Program Implementation, around 37% females of working age (15 years and above) were in the labour force in 2022-23; it was 23.3% in 2017-18. However, there is a huge gap in female labour force participation in rural and urban areas. While the female labour force participation rate in rural areas increased from 24.6% in 2017-18 to 41.5% in 2022-23, there is only a marginal increase in urban areas (from 20.4% to 25.4%). This is a matter of concern that requires further research and in-depth study aimed at feasible policy initiatives.

## Income inequality

In addition to the gender gap in income, inequality of incomes is also on the rise. India is one of the countries where income shares held by the richest 1% is very high (21.7%) compared to Bangladesh (11.6%), China (15.7%), Bhutan (18.1%), and Nepal (9.7%). Income inequality in India is also higher than the world average of 17.5% and the South Asia average of 19.6%. Most importantly, income inequality is also higher than other regional groups such as East Asia and the Pacific (16.5%) and Europe and Central Asia (15.7%).

India needs to address these gender development issues and increasing inequality in order to achieve the SDGs.

## — Topic→G-20 Summit and India's Development Challenges



### Key Highlights



**G-20 Summit:** Held in New Delhi on September 9-10, 2023, focusing on the UN Agenda 2030 for Sustainable Development.



**SDG Summit:** Conducted at the UN on September 18-19, 2023, to assess the progress of the 17 Sustainable Development Goals (SDGs).



**Human Development Index (HDI):** India ranks 134 out of 193 countries with an HDI value of 0.644, indicating medium human development.

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**Gender Disparities:** Significant gender gaps exist, with a Labour Force Participation Rate (LFPR) of 28.3% for women versus 76.1% for men, showing a 47.8 percentage point difference.



**Income Inequality:** The wealthiest 1% in India holds 21.7% of the income, surpassing many neighboring countries and the global average of 17.5%.



**Progress Since 1990:** India's HDI value rose by 48.4% from 0.434 in 1990 to 0.644 in 2022, though growth has been hampered by the COVID-19 pandemic.



**Need for Policy Initiatives:** Urgent research and policy measures are required to address gender gaps and income inequality to achieve the SDGs.

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## \_\_ Key Themes from the Human Development Report (HDR)



### **Human Development Index (HDI):**

#### **Dimensions:**

Long and healthy life (Life expectancy)

Knowledge (Years of schooling)

Decent standard of living (Income per capita)

#### **Current Status:**

HDI value: 0.644 (Rank 134 out of 193 countries)

#### **Comparison:**

##### **Neighbouring countries' HDI:**

Malaysia (63), Thailand (66), China (75)

---

## \_\_ Gender and Income Inequality Issues



### **Gender Development Index (GDI):**

Measures disparities in human development by gender

Gender gap in Labour Force Participation Rate (LFPR):

Women: 28.3%, Men: 76.1%

### **Income Inequality:**

Richest 1% holds 21.7% of total income

Higher than global average (17.5%) and South Asia average (19.6%)

### **Recommendations for Improvement**

#### **Boost Human Development Initiatives:**

Address gender gaps and income inequality

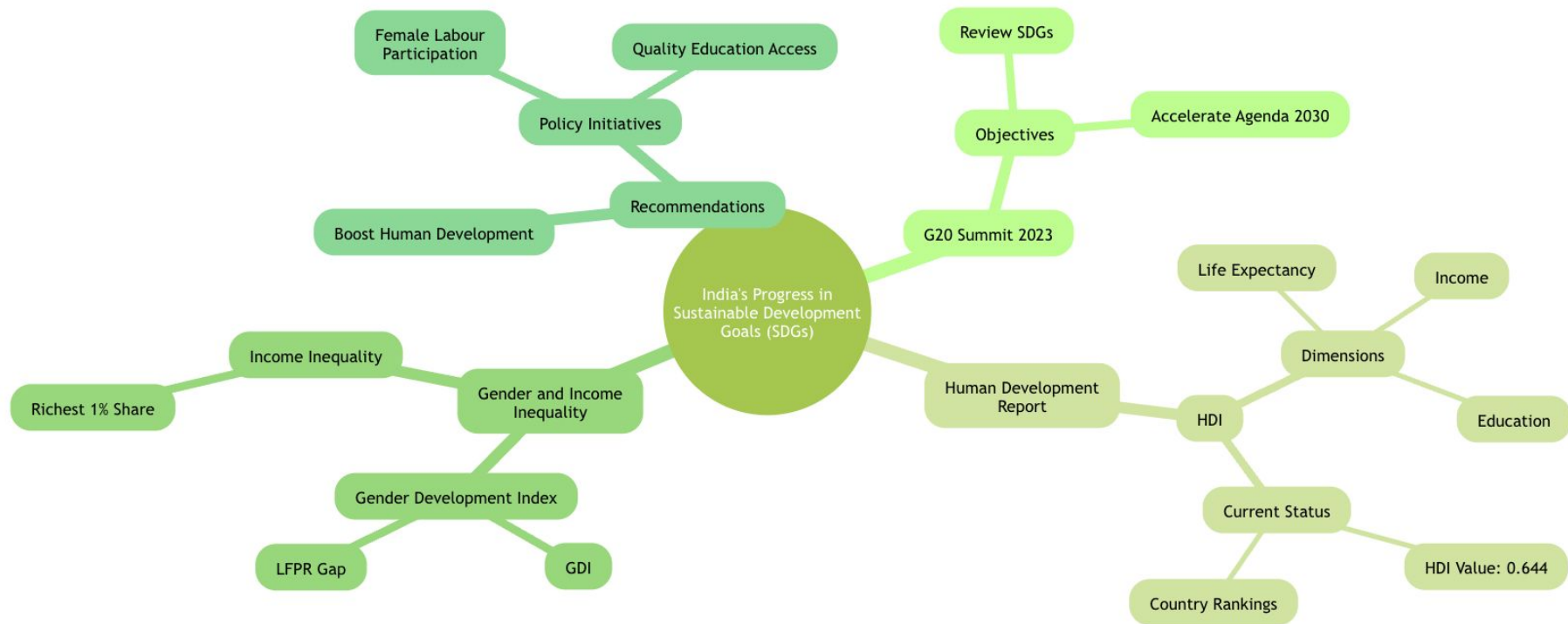
#### **Policy Initiatives:**

Enhance female labour force participation

Improve access to quality education

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Figure 1.1: Minimap



# On the exception to marital rape

What is the legal provision under challenge? What rights does it infringe upon and what are the contentions advanced by stakeholders? What is the doctrine of 'coverture' in English common law? What was the split verdict issued by the Delhi High Court in 2022 on the issue?

## EXPLAINER

Anarika Bhaumik

### The story so far:

A three-judge bench headed by Chief Justice of India (CJI) D.Y. Chandrachud has begun hearing a batch of petitions challenging the constitutional validity of Exception 2 to Section 375 of the Indian Penal Code, 1860 (IPC). The challenge also extends, by implication, to Exception 2 of Section 63 of the Bharatiya Nyaya Sanhita (BNS), 2023, which supercedes the former provision. These provisions grant legal immunity to Indian husbands by stipulating that "sexual intercourse or sex with a man with his wife, provided she is not under 18 years of age, do not constitute rape".

### What do statistics say?

While data on marital rape remains limited due to stigma and legal barriers, available statistics are deeply concerning. Data from the National Family Health Survey-5, conducted between 2019 and 2022, indicates that nearly one-third of married women (31.49 years) in India have experienced physical or sexual violence at the hands of their husbands. Additionally, global statistics reveal that approximately three-quarters of all sexual assaults transpire within intimate settings, often perpetrated by someone familiar to the survivor.

### What is the genesis of the exception?

The MRE is a colonial relic, originating from the 'doctrine of coverture' in English common law, which severely curtailed a married woman's legal autonomy. As elucidated by the Supreme Court in *Joseph Shine versus Union of India* in 2018, this doctrine assumed that the husband and wife became a single entity after marriage, that is, "the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband".

One of the earliest instances of codification of the MRE can be traced back to British jurist Matthew Hale, who wrote in a 1736 treatise that "the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract: the wife has given up herself in this kind unto her husband, which she cannot retract". Hale's reasoning proved hugely influential and was subsequently adopted by several British colonies. However, in 1991, England outlawed the MRE in the landmark case of *R versus R* underscoring that the common law doctrine no longer represented the true position of a wife in present-day society.

**What are challenges before the SC?** Section 375 of the IPC delineates seven conditions under which sexual intercourse is deemed rape, such as when it occurs without the woman's consent, or when consent is obtained through coercion. Those convicted are punished with a prison term of at least 10 years, which can be extended to a life sentence, along with a possible fine. However, the provision stipulates two "exceptions". The first exception pertains to medical procedures. As per the second exception, "sexual intercourse or sexual acts by a man with his own wife do not constitute rape if the wife is over 18 years of age. While the law initially granted immunity to husbands if their wives were under 15 years old, the Supreme Court revised this age limit to 18 years in *Independent Thought versus Union of India*



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2007). The MRE, therefore, creates a legal fiction whereby, even if all the elements constituting the offence of rape are met, a conviction cannot take place if the parties are married and the wife is over 18 years of age. However, a married woman can seek recourse to other criminal law provisions such as Section 49 of the BNS which criminalises subjecting a woman to "cruelty". Civil remedies can also be availed under laws such as the Protection of Women from Domestic Violence Act (2005) but they are limited to "protection orders, judicial separation and monetary compensation". The petitioners have argued that the exception is unconstitutional since it violates a host of fundamental rights. Foremost among them is Article 14 which guarantees the equal protection of laws to all persons. The MRE creates two distinct classes of victims of non-consensual sex by denying married women the protection of laws that are extended to unmarried women. This, according to the petitioners, also offends the principle of "substantive equality" by failing to address systemic barriers to ensure that all women regardless of their marital status receive equal protection against sexual violence. By specifically disadvantaging married women, the MRE violates their right to non-discrimination under Article 15(1).

Another important factor is the purported violation of the right to privacy and bodily integrity under Article 21. The Supreme Court's ruling in *K.S. Puttaswamy versus Union of India* (2017) not only clarified that privacy was a fundamental right, it also affirmed the concept of decisional autonomy – the right of each individual to determine how and for what purposes their body may be used. As noted by constitutional law expert Gautam Bhatia the true brilliance of *Puttaswamy* lies in clearly establishing that the right to privacy is not merely

anchored in physical spaces and institutions (such as marriage), but is fundamentally tied to individual self-determination. The right is, therefore, inseparable from the ability to make choices regarding the most integral aspects of one's body and life. In *Josephine*, the top court built on this jurisprudence by observing that "familial structures cannot be regarded as private spaces where constitutional rights are violated" and that doing so is "to obstruct the unfolding vision of the Constitution".

### What are the judicial precedents?

In March 2022, the Karnataka High Court in *Hrishikesh Sahoo versus State of Karnataka and Others* ruled that a married man can be prosecuted for raping his wife. Relying on a 2013 report authored by the Justice J.S. Verma Committee, which recommended the abolition of the MRE, Justice M. Nagaprasanna reasoned that no legal exception can be so absolute as to licence crimes against society. However, instead of striking it down, he made the exemption inapplicable in cases involving the commission of heinous sexual offences by husbands against their wives.

The case stemmed from a 2017 complaint by a woman against her husband, Hrishikesh Sahoo, accusing him of committing multiple sexual offences. He was also charged with sexual assault on abusing their daughter. An appeal was subsequently filed challenging the High Court's decision resulting in an interim stay being imposed by a bench headed by former CJI N.V. Ramanna. In an affidavit filed before the top court, the Karnataka government, however, endorsed the High Court's ruling.

In May 2022, the Delhi High Court rendered a split verdict on this issue.

Justice Rajiv Shakthar deemed the MRE unconstitutional, asserting that it violates a woman's bodily autonomy and expression. He characterised the exception as "steeped in patriarchy and misogyny," adding that "the classification, in my opinion, is unreasonable and manifestly arbitrary as it implies that forced sex outside marriage constitutes 'real rape,' whereas the same act within marriage does not." Conversely, Justice C. Hari Shankar opined that within marriage, sexual relations are a "legitimate expectation" making the MRE legal. "Introducing, into the marital relationship, the possibility of the husband being regarded as the wife's rapist, if he has, on one or more occasions, sex with her without her consent would, in my view, be completely antithetical to the very institution of marriage, as understood in this country, both in fact and in law", he reasoned.

Following this split verdict, the petitioners moved the Supreme Court, which clubbed together all petitions related to the MRE in January last year. While an authoritative pronouncement is awaited, the top court in 2022 recognised for the first time that "sexual assault by a man against his wife can constitute rape" in a separate case concerning an unmarried woman's right to seek medical termination of pregnancy. A Bench led by Chief Justice Chandrachud underscored, "We would be remiss in not recognising that intimate partner violence is a reality and can take the form of rape. The misconception that strangers are exclusively or almost exclusively responsible for sex and gender-based violence is a deeply regrettable one".

### What has the Centre stated?

The Union government's latest Supreme Court affidavit is the first time that it has second-opposed the striking down of the MRE. During the proceedings before the Delhi High Court, the government had said that the "issue needs wider consultations" and that a review of existing criminal laws was pending at that time. Drawing from Justice Shankar's opinion, the Centre has argued that marriage creates "a continuing expectation of reasonable sexual access" which is absent in the case of a stranger or of another intimate relationship. While acknowledging that a man has no fundamental right to violate his wife's consent, it has contended that classifying marital acts as "rape" is "excessively harsh" and "disproportionate". It has also appealed the court that criminalising marital rape would affect the sanctity of the institution of marriage and potentially result in false allegations of marital rape.

### Would a 'new' offence be created?

A pivotal question before the top court is whether striking down the MRE would result in the creation of a new offence, as it would allow for the prosecution of husbands who engage in non-consensual sex with their wives. Justice Shankar, in his opinion, responded in the affirmative and cautioned that there is an "absolute proscription" against this since such an authority rests exclusively with the legislature. However, senior advocate Rebecca Jha argued before the Delhi High Court that deeming the exception unconstitutional would not create any new offence, as the offence already exists – rather, it would simply remove the legal immunity presently enjoyed by a specific class of individuals. In *Independent Thought*, while raising the age for the application of the MRE from 15 to 18 years, the top court noted that "by partly striking down Section 375 IPC, no new crimes is being created".

## THE GIST

▼ The Marital Rape Exception (MRE) is a colonial relic, originating from the 'doctrine of coverture' in English common law, which severely curtailed a married woman's legal autonomy.

▼ In March 2022, the Karnataka High Court in *Hrishikesh Sahoo versus State of Karnataka and Others* ruled that a married man can be prosecuted for raping his wife. The judgment relied on a 2013 report authored by the Justice J.S. Verma Committee, which recommended the abolition of the MRE.

▼ A pivotal question before the top court is whether striking down the MRE would result in the creation of a new offence, as it would allow for the prosecution of husbands who engage in non-consensual sex with their wives.



# Topic→Judicial Review of Marital Rape Laws in India



## Overview of Judicial Review



**Judicial Review:** A three-judge Bench led by Chief Justice D.Y. Chandrachud is examining petitions challenging the constitutional validity of Exception 2 to Section 375 of the IPC and Section 63 of the BNS, 2023.

## Legal Immunity for Husbands

**Legal Immunity:** Current laws provide immunity to husbands, asserting that sexual acts with their wives over 18 are not considered rape.

## Statistics on Marital Violence




**Marital Violence:** The National Family Health Survey-5 reveals that nearly one-third of married women (ages 18-49) in India have experienced physical or sexual violence from their husbands.

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# Global Context of Domestic Violence

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 **Global Context:** Around 75% of sexual assaults occur in intimate settings, often perpetrated by someone known to the survivor, underscoring a widespread issue of domestic violence.


## Historical Context of Marital Rape Exemption

 **Historical Context:** The marital rape exemption (MRE) is rooted in the colonial "doctrine of coverture," which restricted a married woman's legal autonomy.

## Legal Precedent in India

 **Legal Precedent:** The Supreme Court's 2018 decision in *Joseph Shine versus Union of India* criticized the coverture doctrine, highlighting the necessity for legal acknowledgment of a woman's autonomy.

## International Changes in Marital Rape Laws

 **International Changes:** England abolished the MRE in 1991 in the case of *R versus R*, marking a pivotal change in the legal status of wives in society.

# — Analysis of Rape Laws and Legal Disparities

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## Definition of Rape

Section 375 of the IPC: Defines rape with seven conditions, including lack of consent and coercion.



## Punishment for Rape

Minimum Sentence: 10 years imprisonment.

Maximum Sentence: Life imprisonment and fines.



## Exceptions in Law

Medical Procedures: Exempted from being classified as rape.

Marital Exception: Sexual acts between a man and his wife, if she is over 18, are not considered rape. This was revised from 15 years in 2017.

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## Legal Disparity

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**Marital Rape Exception (MRE):** Creates a legal distinction, denying married women the same protections as unmarried women.

**Equality Concerns:** Raises issues under Article 14 regarding equal protection under the law

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**Violation of Rights** Fundamental Rights: Petitioners argue MRE violates rights such as non-discrimination (Article 15) and the right to privacy and bodily integrity (Article 21).



## Judicial Precedents

**Supreme Court Rulings:** Cases like K.S. Puttaswamy and Joseph Shine emphasize privacy and individual autonomy as fundamental rights, extending beyond marriage.



## Call for Equality


**Advocacy for Change:** Petitioners call for recognition of married women's rights to equal protection against sexual violence, challenging systemic legal barriers.


**Summary:** The Supreme Court is confronted with the challenge of addressing the constitutionality of rape law exceptions that disadvantage married women, highlighting issues of equality and fundamental rights.





1-Argentine province La Rioja's prints its own money.

2-Saudi Arabia launches new digital platform to ensure wage protection-

 The new labour rules in Saudi Arabia will benefit at least 10 African countries, including Sudan, Ethiopia, Uganda, Egypt, and Kenya.

 Additionally, nine Asian countries such as India, Bangladesh, Pakistan, Vietnam, the Philippines, and Sri Lanka will also benefit from these rules.

 **The Musaned platform** allows foreign workers in the domestic work sector to check existing employment contracts and receive updates via a dedicated app.

 Musaned can be linked with contract insurance and health benefits for foreign workers.

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The platform aims to protect human rights and provide a stable working environment for both employees and employers.



Musaned can track financial transactions between employers and foreign workers, ensuring employers meet their contractual obligations.



The initiative emphasizes the importance of safeguarding the rights and welfare of foreign workers in Saudi Arabia.

**Summary:** The Musaned platform in Saudi Arabia enhances labor rights for foreign workers from various African and Asian countries, ensuring contract transparency and protection of human rights.

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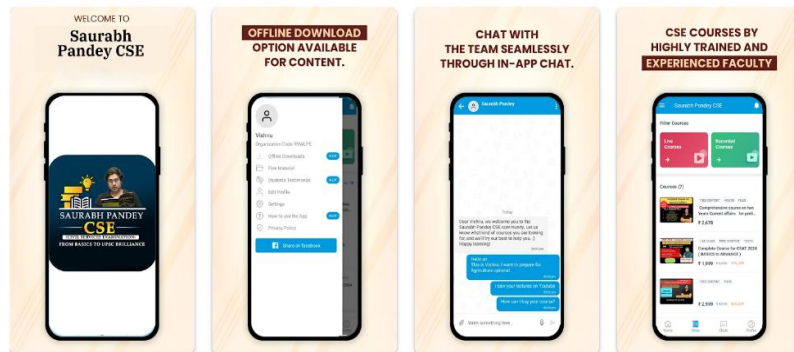
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## Topic → Committee On Simultaneous election

### Q 1- ELECTORAL REFORM

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, has accepted the recommendations of the High-Level Committee on Simultaneous Elections under the chairmanship of former President Shri Ram Nath Kovind.

Simultaneous elections: Recommendations of high-level committee

1. Elections have been held simultaneously between 1951 and 1967.
2. Law Commission (1999): One election to Lok Sabha and all state assemblies.
3. Panel of Experts (2015): suggest methods for simultaneous elections.
4. High-Level Committee on Simultaneous Elections (headed by Ram Nath Kovind) extensively consulted various stakeholders including political parties.

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Q 3 --Parliamentary  
supremacy--PLZ TYPE  
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### Bound supremacy

Parliamentary sovereignty isn't undone by the basic structure doctrine

It is fairly well-known that parliamentary legislation is subject to two limitations under the Constitution of India. One is by judicial review, or the power of constitutional courts to review legislation for possible violation of any fundamental right. Another is that no amendment to the Constitution should have the effect of destroying any of its basic features. While the first limitation is set out in Article 32, under which laws inconsistent with or in derogation of fundamental rights are void, the second limitation is based on the 'basic structure' doctrine evolved by the Supreme Court. Vice-President Jagdeep Dhankhar's remarks questioning the basic structure doctrine propounded in the landmark Kesavananda Bharati case (1973) does not reflect the correct position of law. In his view, the basic structure doctrine has usurped parliamentary sovereignty and goes against the democratic imperative that the elected legislature should reign supreme. His particular concern seems justified: that the Supreme Court prevented the National Judicial Appointments Commission, a body to appoint judges to the superior courts in the country, from coming into existence by striking down the relevant amendment to the Constitution and a parliamentary law to give effect to it. But it is difficult not to see his attack on the basic structure doctrine as part of the current dispensation's tirade against the judiciary and its grievance that it does not have enough say in the appointment of judges.

The idea that the basic structure doctrine undermines parliamentary sovereignty is simply wrong. Parliament is sovereign in its domain, but it is still bound by the limitations imposed by the Constitution. Mr. Dhankhar seems to have a problem with any sort of limitation on Parliament's jurisdiction to amend the Constitution. Surely, he could not have forgotten that the basic structure doctrine had helped save the Constitution from being undermined through the misuse of parliamentary majority. The main purpose of the doctrine is to ensure that some fundamental features of the Constitution are not legislated out of existence. It has been invoked to strike down amendments only in a few cases, but many others have survived basic structure challenges. Parliamentary majority is transient, but essential features of the Constitution such as the rule of law, parliamentary form of government, separation of powers, the idea of equality, and free and fair elections ought to be perennially protected from legislative excess. It may be open to a new Constituent Assembly to come up with another constitution that changes these fundamental concepts, but a legislature formed under the current Constitution cannot be allowed to change its core identity.



28th dec 2022



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# Q 4 --CAG --PLZ TYPE on youtube the hindu analysis by saurabh pandey sir --28th dec 2022



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## The story so far:

- A recent Comptroller and Auditor General of India (CAG) report on the update exercise of the National Register of Citizens (NRC) in Assam has flagged serious irregularities, including “haphazard development” of software for the exercise, making it prone to data tampering, and flagged undue profits worth crores amassed by the system integrator (SI) by violating the Minimum Wages Act.

on the Human Development Index.

However, health experts say the fact that India's fertility rate is declining due to a variety of factors, including increased literacy rates, increase in the age of marriage and so forth, should prompt measures to better anticipate, from the government, decisions to general health workers to launch campaigns on oral cancer awareness, push vaccinations and screening for all girls.

What is the CAG's audit report on Assam's NRC?

The report, released on December 24, says the NRC update exercise in Assam has been marred by several irregularities, including "haphazard development" of software for the exercise, making it prone to data tampering, and flagged undue profits worth crores amassed by the system integrator (SI) by violating the Minimum Wages Act.

The story so far:

A recent Comptroller and Auditor General of India (CAG) report on the update exercise of the National Register of Citizens (NRC) in Assam has flagged serious irregularities, including “haphazard development” of software for the exercise, making it prone to data tampering, and flagged undue profits worth crores amassed by the system integrator (SI) by violating the Minimum Wages Act.

The audit flagged irregularities in a compliance report of hospital arrangements for NRC update project in Assam tabled in the Assam Assembly on December 24.

What is the NRC exercise?

The NRC was first created in 1950 to assist in identify those born in India and migrants from elsewhere about Pakistan, now Bangladesh.

In 2019, the Supreme Court issued directions to the Centre and State to initiate an exercise in Assam to update the NRC register.

What are the CAG's concerns?

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## Q 5 --local bodies and urban bodies --PLZ TYPE on youtube the hindu analysis by saurabh pandey sir --11th october 2022

- The Constitution mandates that panchayats and municipalities shall be elected every five years and enjoins States to devolve functions and responsibilities to them through law.
- This is regarded as a design weakness, but on closer look, is not one.
- Given diverse habitation patterns, political and social history, it makes sense to mandate States to assign functions to local governments.



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