



# RESEARCH JOURNAL

Department of Political Science, The Assam Valley School

Winter Semester, 2020-21, Volume 2



THINK



TANK



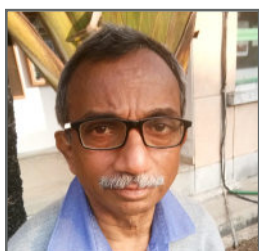
# THINK TANK

Department of Political Science

Winter Semester, 2020-21, Volume 2

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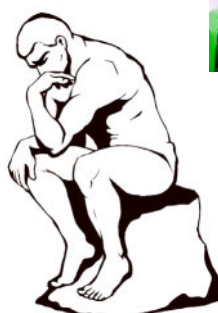
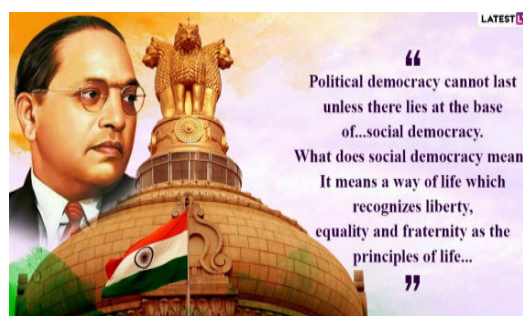
Publisher: The Assam Valley School, P. O. Balipara, Assam-784101.

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This issue is dedicated to  
Dr. B. R. Ambedkar

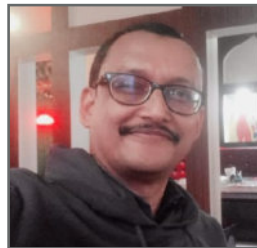


This edition of the Think Tank recalls with humility and immense gratitude the political sagacity, foresight and wisdom of the framers of our Constitution, indeed the Cornerstone of a Nation. Their vision of a free, democratic, secular and equal India accommodating the spirit of cultural syncretism, respect and dignity should be a source of inspiration for every right thinking Indian to work selflessly and with ignited zeal to build an all-inclusive India where the spirit of empathy, cooperation, compassion, rational and scientific thinking triumphs over narrow and myopic parochial construct.



**“Let the truth be told.”**

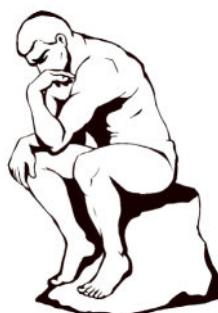
The interplay and dynamics of interest articulation and aggregation provide a fascinating analysis of how a democracy works. It is inevitable that in the process of legislation, there are bound to be contradictory pressures. The impact of growing economic forces since the 1990s indicated the retreat of the State from key domains. Deregulation versus Protectionism discourse held sway during the period when the global economy itself was undergoing a sweeping transformation. The impact of demand and supply basic to economics still remains an elemental driving force. The trinity of Globalization, Liberalization and Privatization came to be firmly entrenched even as giant State backed entities collapsed under the sheer weight of inefficiency, red-tapism and corruption and the mighty erstwhile USSR had to resort to the biggest ever garage sale in history of its State sponsored units to feed the hungry population. Deregulation of the agricultural sector is often diced with a fair slice of dissent as protectionism is withdrawn. After the first flush of success with the Green Revolution, this sector should have moved ahead. As things stand now, the three farm laws versus the agitating farmers, the standoff does not augur well for both sides. Jai Jawan, Jai Kisan was the clarion call of the 70s to change the face of the Indian economy, but right now things have come down to a situation where the apex court had to step in to put the laws on hold. The obdurate stand with solidarity being displayed by a number of affiliated groups for both sides has one message going out that each side is right. This is how a manufactured right dominates leading to a situation where the course of negotiations



can hold no meaning. The agitation is not by a lumpen section of the peasants versus the government of the day which wants to usher in a progressive measure to unshackle the agricultural economy. It is bound to confuse the layman caught in the crossfire with the hope for food on his plate every

day. Conviction is at the core of one's own existence. After ten rounds of parleys, the issue is yet to be resolved. The farmers are stuck with their one point agenda of total repeal and the government offering leeway by putting the laws on hold for 18 months failed to convince the agitators. Tractors are to be on display at the Outer Ring Road at Delhi even as the martial might and cultural splendor of India will be on display today. Laws need prior consultation, a sense of reassurance. The narrative of these laws as an unwanted gift for the farmers versus it is either my way or the highway has not helped ease the situation.

With better sense yet to prevail and the dawn of reason nowhere in sight, the one fundamental question left unanswered is if both sides are equally right as they claim to be, who will have the moral courage to accept what is wrong? A seven decade old republic will surely provide the answer in the future where the truth shall be told without any frills in black and white. Till such time, the dynamics will play on.



*Thajeb Ali Hazarika*



# 3 CASES AND 3 JUDGEMENTS

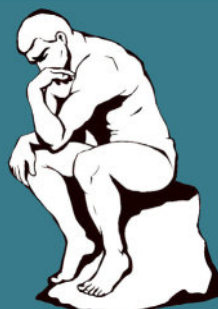
*[Freedom of speech guaranteed under Part III of the Constitution is critically evaluated by Aryan in the light of three recent cases involving three journalists of the electronic media and the judgment by the apex court]*

## CONTENTS-

1. Fundamental Rights provision under Freedom of Speech and Expression
2. Restrictions
3. Incident
4. Cases Filed
5. Judgement by the Supreme Court
6. Implications for the future

## Article 19: The freedom of Speech and expression

Freedom of speech, considered the basic freedom by most philosophical thinkers, consists of several facets, including the right to express one's opinion unhindered, unfettered by the fear of retribution. It is one of the most basic elements for a healthy, open-minded democracy. It allows people to freely participate in the social and political happenings of their country. The essence of free speech is the ability to think and speak freely and to obtain information from others through publications and public discourse without fear of retribution, restriction, or repression by the government. It is through free speech, people could come together to achieve political influence, to strengthen their morality, and to help others to become moral and enlightened citizens.



The freedom of speech is regarded as the first condition of liberty. Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. In modern time it is widely accepted that the right to freedom of speech is the essence of free society and it must be safeguarded at all time. The first principle of a free society is an untrammled flow of words in an open forum. Liberty to express opinions and ideas without hindrance, and especially without fear of punishment plays significant role in the development of that particular society and ultimately for that state. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.

In India, this right is granted by Article 19(1)(a).of the Constitution. It guarantees to all its citizens the right to freedom of speech and expression. The law states that, "all citizens shall have the right to freedom of speech and expression".

## RESTRICTIONS AGAINST FREEDOM OF SPEECH AND EXPRESSION

The right to freedom of speech and expression is not completely unchecked. Article 19 (2)

allows for reasonable restrictions to be imposed on all fundamental rights, including that of freedom of speech and expression.

It is necessary to place some restrictions on freedom of speech and expressions for the maintenance of social order because no freedom can be absolute or completely unrestricted.

Accordingly, under **Article 19(2)** of the Constitution of India, the State may make a law imposing “reasonable restrictions” on the exercise of the right to freedom of speech and expression “in the interest of” the public on the following grounds:**Clause (2) of Article 19** of the Indian constitution contains the grounds on which restrictions on the freedom of speech and expression can be imposed:-

**1) Security of State:** Security of state is of vital importance and a government must have the power to impose a restriction on the activity affecting it. Under Article 19(2) reasonable restrictions can be imposed on freedom of speech and expression in the interest of the security of State.

**2) Friendly relations with foreign states:** In the present global world, a country has to maintain a good and friendly relationship with other countries. Something which has the potential to affect such relationship should be checked by the government. Keeping this thing in mind, this ground was added by the constitution (First Amendment) Act, 1951. The object behind the provision is to prohibit unrestrained malicious propaganda against a foreign friendly state, which may jeopardize the maintenance of good relations between India and that state.

**3) Public Order:** Next restriction prescribed by constitution is to maintain public order: This ground was added by the Constitution (First Amendment) Act. ‘Public order’ is an expression of wide connotation and signifies “that state of tranquility which prevails among the members of political society as a result of internal regulations enforced by the Government which they have established.”

Public order is something more than ordinary maintenance of law and order. ‘Public order’ is synonymous with public peace, safety and tranquility. Anything that disturbs public tranquility or public peace disturbs public order. Thus communal disturbances and strikes promoted with the sole object of accusing unrest among workmen are offences

against public order. Public order thus implies absence of violence and an orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. Public order also includes public safety. Thus creating internal disorder or rebellion would affect public order and public safety. But mere criticism of government does not necessarily disturb public order.

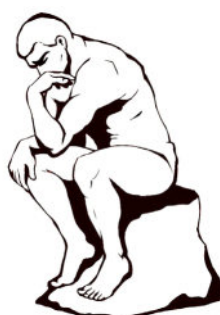
**4) Decency or morality:** The way to express something or to say something should be a decent one. It should not affect the morality of society adversely. Our constitution has taken care of this view and inserted decency and morality as a ground. The words ‘morality or decency’ are words of wide meaning. Sections 292 to 294 of the Indian Penal Code provide instances of restrictions on the freedom of speech and expression in the interest of decency or morality. These sections prohibit the sale or distribution or exhibition of obscene words, etc. in public places. No fix standard is laid down till now as to what is moral and indecent. The standard of morality varies from time to time and from place to place.

**5) Contempt of Court:** In a democratic country Judiciary plays a very important role. In such situation, it becomes essential to respect such an institution and its order. Thus, restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court. According to Section 2 ‘Contempt of court’ may be either ‘civil contempt’ or ‘criminal contempt.’ But now, Indian contempt law was amended in 2006 to make “truth” a defense.

**6) Defamation:** One’s freedom, be it of any type, must not affect the reputation or status of another person. A person is known by his reputation more than his wealth or anything else. Constitution considers it as ground to put restriction on freedom of speech. Basically, a statement, which injures a man’s reputation, amounts to defamation. Defamation consists in exposing a man to hatred, ridicule, or contempt.

**7) Incitement to an offense:** This ground was also added by the Constitution (First Amendment) Act, 1951. Obviously, freedom of speech and expression cannot confer a right to incite people to commit offense. The word ‘offense’ is defined as any act or omission made punishable by law for the time being in force.

**8) Sovereignty and integrity of India:** To maintain the sovereignty and integrity of a state is the prime duty of government.





**AMISH DEVGAN**

**Image Source:** <https://english.varthabharati.in/india/amish-devgan-asks-if-soldiers-can-serve-country-during-covid-why-students-cant-write-jee-neet>

Taking into it into account, freedom of speech and expression can be restricted so as not to permit anyone to challenge sovereignty or to permit anyone to preach something which will result in threat to integrity of the country.

From above analysis, it is evident that Grounds contained in **Article 19(2)** show that they are all concerned with the national interest or in the interest of the society. The first set of grounds i.e. the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and public order are all grounds referable to national interest, whereas, the second set of grounds i.e. decency, morality, contempt of court, defamation and incitement to an offence are all concerned with the interest of the society.

### **AMISH DEVGAN'S CASE**

News18 Anchor To Face Trial For Sufi Saint Remark

#### **INCIDENT:-**

Devgan has been accused of hurting religious sentiments of the Muslim community, after he allegedly made derogatory comments about the Sufi saint in his show on June 15. The FIRs alleged that Devgan had used word "lootera [robber]" for the saint. Devgan maintains it was an inadvertent error. In a tweet posted

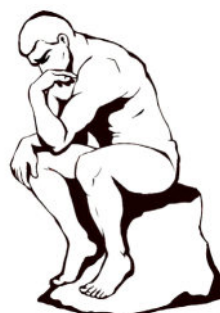
on June 17, the news anchor claimed that he was actually referring to Muslim ruler Alauddin Khilji, but mistakenly ended up naming Chisti instead. "I sincerely apologise for this grave error and the anguish it may have caused to followers of the Sufi saint Moinuddin Chishti, whom I revere," he had said. "I have in the past sought blessings at his dargah. I regret this error." It's important to mention here that Khwaja Gareeb Nawaz is revered not only by one particular community but has devotees across all the faiths in the world.

#### **CASES FILED:-**

Reacting over the incident, Raza Academy lodged a complaint against the anchor and demanded FIR against him. In Hyderabad too, complaint has been lodged against the anchor in Bahadurpura Police Station. The anchor's remark caused a furor on Twitter. The netizens reacted sharply and accused Devgan of abusing a centre of faith for centuries beyond religious boundaries. #ArrestAmishDevgan has been trending on Twitter. As many as seven FIRs have been filed in Rajasthan, Madhya Pradesh, Uttar Pradesh, Maharashtra and Telangana against the anchor

The FIRs against the anchor invoke Sections:

- 295A (deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs)
- 153A (promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc, and doing acts prejudicial to maintenance of



harmony)

- 505 (statements conducing to public mischief) and
- 34 (acts done by several persons in furtherance of common intention) of the Indian Penal Code.

## JUDGEMENT:-

On December 7, the Supreme Court of India in an attempt to strike a balance in regulating expressive freedom and define the contours of hate speech delivered a 128-page long judgment in the case of **Amish Devgan vs. Union of India.**

The Supreme Court has refused to quash FIRs against him in connection with his comment on Sufi saint Moinuddin Chishti during a TV debate. However, a division Bench of Justices A.M. Khanwilkar and Sanjiv Khanna, gave him interim protection from arrest & combined all FIRs to one place in Ajmer.

Davgan moved the Supreme Court under Article 32 of the Constitution, for quashing of the FIRs saying it was a slip of the tongue. He also pleaded that as an alternative, he be tried for minor harm punishable under Section 95 of the IPC (“Nothing is an offence... if that harm is so slight that no person of ordinary sense and temper would complain of such harm”) and that all the FIRs be clubbed and transferred to one place. But on December 7, 2020, in Amish Devgan v UOI, the Supreme Court refused to quash the FIRs, but said Davgan would get protection from any coercive action if he cooperated with the probe.

While the judgment extensively relies upon the wisdom of various foreign jurisdictions as well as the court’s own precedents to re-examine the definition of hate speech, it cautiously noted: “It remains difficult in law to draw the outmost bounds of freedom of speech and expression, the limit beyond which the right would fall foul and can be subordinated to other democratic values and public law considerations, so as to constitute a criminal offence.”

Not only does the Davgan judgment once again shine a light on the overbroad and vague interpretations that the law against hate speech receives, it also brings to fore the variance in proactivity shown by the court in certain cases as compared to others.

## SIDDIQUE KAPPAN’S CASE:-

### INCIDENT:-

Kappan, a freelance journalist reporting for Malayalam portals, was arrested by the UP police on October 5 along with three others

in an FIR registered for alleged criminal conspiracy to create societal unrest in the wake of Hathras incident.

Kappan and the three others are lodged in the Mathura Jail after the Mathura police arrested them on October while they were travelling to meet the family of the 19-year-old Dalit woman from Hathras who was allegedly gang-raped by four Thakur men. Uttar Pradesh Police have alleged that Kappan and two members of the Campus Front of India (CFI) were part of a “conspiracy” to inflame religious enmity over the Hathras rape, and booked them on various charges, including under the stringent UAPA and sedition.



**SIDDIQUE KAPPAN**

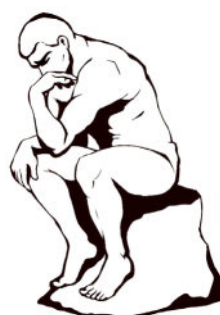
**Image Source:** <https://www.indialegalive.com/constitutional-law-news/supreme-court-news/supreme-court-kerala-journalist-siddique-kappan-video-conferencing-hathras-rape-case/>

### CASES FILED:-

On November 20, the Uttar Pradesh government had filed an affidavit in the Supreme Court, claiming that Kappan was going to Hathras under the “garb of journalism with a very determined design to create caste divide and disturb law and order situation”.

The state alleged that Kappan is the office secretary of the Popular Front of India and was using a journalist cover by showing identity card of a Kerala-based newspaper, Tejas, which was closed in 2018. Popular Front of India is a Kerala-based organisation that the Uttar Pradesh government has sought to be banned for its alleged involvement in the violence during the protests against the contentious Citizenship Amendment Act.

Uttar Pradesh government reiterated that Kappan was “directly and closely associated” with leaders of the Popular Front of India, who have been “executive members of the banned SIMI [Students Islamic Movement of India]”, reported The Indian Express.



## JUDGEMENT

The Supreme Court on November 20 (Friday) took objection to the manner in which the case challenging the detention of Kerala journalist Siddique Kappan was reported by the media. Chief Justice of India SA Bobde said that the media reports claiming that the Court had denied relief to Kappan were “unfair”.

“There was very unfair reporting about our earlier order. It was said that we denied you relief”, CJI Bobde said. Senior Counsel **Kapil Sibal**, appearing for the Kerala Union for Working Journalists (petitioner), said that “he had nothing to do with it” and that “unfair reporting happens everyday.”

Solicitor General (SG) **Tushar Mehta**, who appeared for the Uttar Pradesh government, concurred with the CJI. He said, “Yes, there was inaccurate reporting. Such reports need to be clarified.”

During the previous hearing on November 16 (Monday), the Supreme Court had sought the response of the UP government in the matter while orally remarking that it might send the matter back to Allahabad High Court as it was not inclined to encourage an Article 32 petition.

Why did you not approach the High Court,” CJI Bobde had asked Senior Counsel Kapil Sibal on Monday. Sibal had said that Kappan was not being allowed to meet even his lawyers after which the court had sought UP government’s response.

The Court eventually adjourned the case on Friday after SG Mehta told the Court that there was no objection to Kappan meeting his lawyers. Kappan, a journalist working with news portal [www.azhimukham.com](http://www.azhimukham.com) was arrested at a toll plaza near Hathras in Uttar Pradesh while he was on his way to cover the horrific gang-rape and subsequent cremation of a 19-year-old Dalit woman.

He has been charged with offences under Unlawful Activities Prevention Act (UAPA).

A Habeas Corpus plea was filed in the Supreme Court by Kerala Union for Working Journalists (KUWJ) challenging Kappan’s detention, claiming violation of his fundamental rights under Articles 14, 19 and 21 of the Constitution.

Solicitor General Tushar Mehta submitted that Kappan was arrested and remanded by competent court and his bail plea was heard

for 9 days. “He should approach the High Court,” Mehta said.

Sibal responded by saying that the lawyers had gone to the jail authorities to meet him, but they were asked to go to the magistrate. “The magistrate told us that Supreme Court has not ordered so,” he added. Mehta, however, reiterated that he had no objection lawyers meeting Kappan.

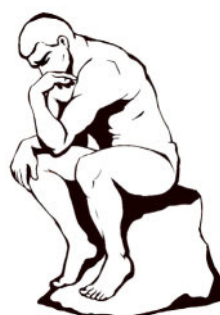
On October 12, the Bench which also comprised Justices AS **Bopanna** and V **Ramasubramanian** had adjourned the Habeas Corpus petition, asking the petitioners to approach the Allahabad High Court first. The apex court had also asked the petitioner to file an amended petition. However, the KUWJ had informed the Court on Monday that not only has the case not progressed at the High Court, but Kappan was also denied the opportunity to meet his lawyers.

After the court sought the response of the UP government, Kappan was able to have a brief conversation with his lawyer over the phone. The plea filed by KUWJ through advocate Shweta Garg states that the arrest was in total violation of guidelines laid down by the Supreme Court in *DK Basu v. State of West Bengal*.

The petition has also made a case for equal access for



Featured Art: Satish Acharya Image Source: <https://twitter.com/satishacharya/status/1323893576636329996>



journalists covering the Hathras incident. It states,

**“The ultimate test of democracy lies in the freedom of speech and expression. Media is the breath of democracy. Denial of access of the journalists to the place of news seriously connected with the dignified**



**life of citizens for reporting is a gross violation of Article 14, 19(1)(a) and 21 of the Constitution.”**

The petitioner has, therefore, sought the immediate release of Kappan.

### **ARNAB GOSWAMI’S CASE:-**

The sudden arrest and alleged assault of Republic TV’s Editor-in-Chief Arnab Goswami by the Raigad Police in Maharashtra has brought to the forefront concerns about India’s long-cherished freedom of speech and whether it is losing its pride of place in the Constitution.

### **INCIDENT:-**

On Wednesday, 4 November, Republic founder and editor-in-chief Arnab Goswami was arrested for allegedly abetting the suicide of interior designer Anvay Naik and his mother in 2018.

More than two years after Naik ended his life owing to financial stress, handwriting and documentation experts have confirmed that a one-page note found in the Alibaug bungalow of interior designer Anvay Naik was indeed written by him.

Home minister Anil Deshmukh confirmed to TOI that his government has received a report from experts stating that the suicide note was written by Naik who died on May 5, 2018. “Forensic opinion has also been given to say he did not sign this suicide note under pressure,” said Deshmukh. The report was submitted to the state on November 4.

Naik had carried out work for firms promoted by Goswami. The Naik family’s contention was that Goswami’s firm owed him Rs 83 lakh. Two others – Nitesh Sarda of Smartworks and Feroz Shaikh of IcastX/Skimedia too had allegedly failed to settle bills. Naik allegedly died by suicide in his own bungalow in Alibaug owing to mounting

debt incurred by his firm. After the incident, an offence was registered against the trio.

### **CASES FILED:-**

The police filed a **charge sheet** against **Republic TV** editor-in-chief **Arnab Goswami** and two others in a 2018 abetment of suicide case. The charge sheet was filed before a court in **Alibaug** in neighbouring Raigad district, where the case for alleged abetment of suicide of interior designer **Anvay Naik** and his mother Kumud has been registered.

Besides Goswami, the other two accused named in the charge sheet are Firoze Sheikh and Nitish Sarda, said special public prosecutor Pradeep Gharat.

The trio has been charged under IPC sections:-

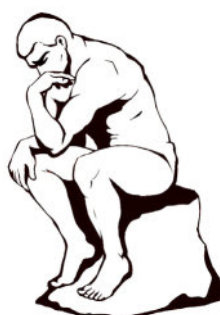
- 306 (abetment to suicide),
- 109 (punishment for abetment) and
- 34 (act done by several people in furtherance of common intention).

As many as 65 persons are named as witnesses in the charge sheet that runs into 1,914 pages. Prosecution sources said that it relies on purported suicide notes as the ‘dying declaration’.

Naik’s handwriting has been matched with the writing in the suicide note and forensic report indicated that he was not under pressure while writing it, sources added. Six statements recorded before a magistrate under section 164 of the Code of Criminal Procedure are also part of the charge sheet. Such statements can be used as evidence during trial.

Incidentally, Goswami had moved the Bombay High Court seeking a stay to the filing of charge sheet, but the petition is yet to be heard.

.....  
**“The ultimate test of democracy lies in the freedom of speech and expression. Media is the breath of democracy. Denial of access of the journalists to the place of news seriously connected with the dignified life of citizens for reporting is a gross violation of Article 14, 19(1) (a) and 21 of the Constitution.”**





**ARNAB GOSWAMI**

Image source: <https://www.telegraphindia.com/india/veterans-look-for-probe-against-arnab-goswami-for-celebrating-the-deaths-of-indian-jawans/cid/1804193>

### JUDGEMENT:-

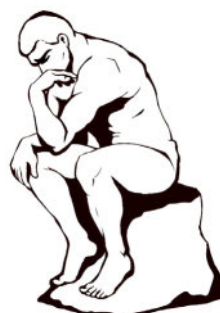
Goswami and the two others were arrested by Alibaug police in Maharashtra's Raigad district on November 4 in connection with the suicide of architect-interior designer Anvay Naik and his mother in 2018 over alleged non-payment of dues by companies of the accused.

However, they got bail from the Supreme Court on November 11.

The police on December 4 filed the charge sheet before a court in Alibaug in neighbouring Raigad district, where the case for alleged abetment of suicide of Naik and his mother has been registered. The charge sheet claims that the accused did not heed interior designer Anvay Naik's threat to end his life if his dues were not paid.

Later, Goswami moved the Bombay High Court seeking a direction to the Alibaug court not to take cognizance of the charge sheet.

Meanwhile, BJP leader Devendra Fadnavis had questioned the Shiv-Sena-NCP-Congress government's decision to file a charge sheet despite the Supreme Court's observations while granting bail to Goswami and others. "Isn't this a mockery of Supreme Court's judgment? Are they again trying to suppress personal liberty?" Fadnavis had asked.



### REACTION TO GOSWAMI'S ARREST

Goswami's supporters say there are political motives behind the arrest. They claim that Goswami was arrested because he accused Mumbai's police commissioner and Maharashtra's state government of covering up Bollywood star Sushant Singh Rajput's apparent suicide in June. In his shows, Goswami often criticized them for being lenient in their investigation into the actor's death.

India's ruling BJP condemned Goswami's arrest, with senior Cabinet ministers dubbing it a crackdown on the freedom of press in Maharashtra state, which is run by a coalition headed by the Shiv Sena party, a former regional ally of Prime Minister Narendra Modi's BJP. Several Bharatiya Janata Party leaders including Union ministers Amit Shah, Smriti Irani and Prakash Javadekar and other senior party functionaries expressed their outrage and compared it to the Emergency imposed by Indira Gandhi in 1975. Several BJP activists even took to the streets and protested, using BJP flags and symbols.

Journalists, on the other hand, are divided over the issue. Many of them are critical of Goswami's right-wing views and his insulting behavior toward ideological opponents.

Arfa Khanum Sherwani, a journalist working for The Wire news portal, says that Goswami's case shouldn't be treated as a freedom of speech issue.

"We need to put it outside the purview of free speech and freedom

of expression because Goswami functions as a political player and not as an impartial journalist,”

But others believe that press freedom must be upheld irrespective of the journalist's ideological leanings.

The opposition Congress party, which is a coalition partner in Maharashtra state, has accused the BJP of “selective outrage,” saying its ministers are silent when secular journalists are harassed and arrested by their own state governments.

Critics accuse PM Modi's government of intimidating journalists and rights activists. At the same time, corporate media's nexus with politicians and government authorities has also had an impact on independent reporting.

In some cases, journalists critical of the ruling party have been charged with sedition. Recently, Siddique Kappan of a Malayalam news portal was arrested under the Unlawful Activities Prevention Act (UAPA) anti-terror law for trying to go to Hathras to report a rape case there. Journalists' groups say the press freedom situation has worsened since the outbreak of the coronavirus pandemic in the country, with authorities targeting journalists and media organizations for criticizing the government's COVID-19 policies.

In June, the BJP government arrested journalist Naresh Kohal in Haryana state for violating COVID-19 rules and creating “nuisance” after he reported a stone throwing incident to police.

India ranks 142 out of 180 countries in the World Press Freedom Index, dropping two places from last year.

Independent journalists say it is becoming increasingly difficult for them to report freely in the current political environment.

“By running campaigns against so-called ‘anti-national’ journalists, the government is trying to create an us-versus-them situation, which reduces the space for open and robust media,”

## IMPLICATIONS FOR THE FUTURE

**Democracy is based essentially on free debate and open discussion if democracy means the government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic**

**process and to enable him to intelligently exercise his rights of making a choice, free and general discussion of public matters is essential.**

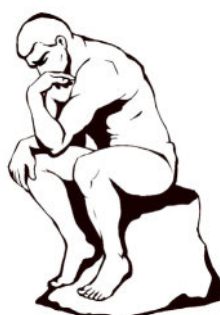
Constitution emphasis on the significance of the freedom of speech and expression. Thus, it is a human as well as a constitutional right which should never be taken away from the citizens. **The government and the police must recognize that the media is an integral part of the governance structure in any democracy.** The state and central governments should desist from misusing the law to threaten the free press. The Press Council of India, a regulatory body, can warn and regulate media if it finds that a newspaper or a news agency has violated media ethics. Statutory status should be given to News Broadcasters Association (N.B.A.) which represents the private television news and current affairs broadcasters.

**Any future legislation to curb fake news should take the whole picture into account and not blame the media and go for knee-jerk reactions; in this age of new media, anyone can create and circulate news for undisclosed benefits.** Media need to stick to the core principles like truth and accuracy, transparency, independence, fairness and impartiality, responsibility and fair play.

Finally, one should be careful while limiting the freedom of expression. Already there are restrictions provided by the Constitution, and any further regulation will only damage a free and liberal society. There is a need to make a distinction between People and idea and let us all be open for criticism of ideas.

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# NIRBHAYA CASE

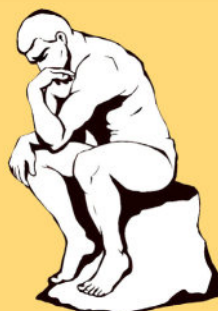
A case which  
shook the  
soul of  
the nation

*[Anam analyzes reconstructs how the bestial incident unfolded, the accused sent to the gallows , role of the investigating police as well as the judiciary with the need to do more in the future to prevent such a horrific occurrence]*

## UNDERSTANDING THE MEANING OF THE TERM“RAPE”:

**R**ape is a type of sexual assault usually involving sexual intercourse or other forms of sexual penetration carried out against the will of a person. Section 376 of the Indian Penal Code lays down stringent punishment for rape in India.

Rape is the fourth most common crime against women in India. According to the 2019 annual report of the National Crime Records Bureau (NCRB), 32033 rape cases were registered across the country, or an average of 88 cases daily, slightly lower than 2018 when 91 cases were registered daily of these, 30,165 rapes were committed by perpetrators known to the victim (94.2 % of cases), a high number similar to 2018. The share of victims who were minors or below 18 – the legal age of consent – stood at 15.4%, down from 27.8% in 2018. On the other hand, rapes by juveniles remained high in India with 3 minors being arrested for rape, assault and attempted violence on women and girls each day in 2019.



## THE HORRIFIC INCIDENT AS IT UNFOLDED:

On a dark and cold night of December 16, 2012, a 23-year-old woman was brutally assaulted and raped in a moving bus in south Delhi. Jyoti Singh, a 23-year-old female physiotherapy intern was beaten, gang-raped, and tortured on in Munirka, a neighbourhood in South Delhi. She was travelling with her friend, Awindra Pratap Pandey. The woman and her friend Pandey, were returning home after watching the movie “Life of Pi” on the night of December 16, 2012. They boarded an off-duty charter bus at Munirka bus stand in which there were six other men including the bus driver. The bus started moving in an off-route direction and the men shut the doors of the vehicle. Suspecting something wrong, when Pandey raised an objection, he was shouted down and a scuffle broke out as the men who were drunk started molesting her. Her friend was knocked down with a rod and the men dragged her to the back of the bus and repeatedly gang-raped for over an hour. As she fought back, one of the juvenile attackers inserted an iron rod into her private parts, pulling and ripping her intestines apart. The bus driver drove all over Delhi while this was happening.

After the attack, both of them were thrown out of the bus to die at the side of the road. The two were found half-dead by a passerby who informed the Delhi Police. She was taken to the Safdarjung Hospital where doctors found she had only five per cent intestines left inside her body. She succumbed to her injuries on December 29, 2012. In her statement to the police, she said she wanted justice against the six attackers. The incident led to widespread demonstrations and protests across the country. It also started changes in the laws about violence against women.

### **WHY IS SHE CALLED NIRBHAYA?**

The rape laws in India do not permit using a victim's name in media. Hence, various publications gave her different names, out of which 'Nirbhaya' which means 'fearless' was widely used. In 2013, she received the International Women of Courage Award from the US Department of State, posthumously. Nirbhaya died two weeks after the attack in a Singapore hospital, where doctors had been treating her for serious injuries to her body and brain. Before she died, she made statements to the authorities about the attack.

### **EVENTS IN BRIEF:**

Dec 17,2012: Nation's anger erupts in the form of widespread protests. Accused identified by the police. Dec 18: Ram Singh and 3 other accused nabbed by the Delhi police. Dec 20: Victim's friend gives statement. Dec 21: Juvenile in the case nabbed from Anand Vihar ISBT, Delhi. Victim's friend identifies Mukesh as one of the accused in the case. Raids conducted in Bihar and Haryana to arrest the 6th accused, Akshay Kumar Singh. Dec 29: After 12 days of fighting for her life, the victim or 'Nirbhaya' succumbs to her injuries. Police add murder charge in FIR. January 2,2013: Then CJI, late Altamas Kabir inaugurates FTC (fast track court) for speedy trial in sexual offence cases. Sep 13: Court awards death penalty to all the 4 convicts March 13: HC upholds the death penalty of all the 4 convicts in the case. May 5,2017: Supreme Court upholds death penalty awarded to the 4 convicts and says that the case falls under the 'rarest of rare' category. Nov 8: Mukesh Singh files a review petition in the Supreme Court against the capital punishment awarded

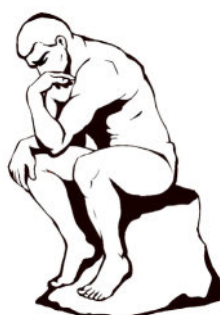
to him. Jul 9: Supreme Court tr quashes the pleas of all the 3 convicts Feb 2019: In order to get death sentences issued for the convicts in the case, victim's parents move the Delhi court. Dec 10,2019: Akshay Kumar Singh, one of the convicts in the case files a review petition with the Supreme Court against the death penalty. Dec 18: Akshay's plea gets rejected. Delhi court directs Tihar jail authorities to issue notices to convicts to utilise the legal remedies left at their disposal. Jan 7,2020: Delhi court issues death warrants against the convicts for hanging on Jan 22 at 7 am in Tihar jail premises. Jan 14: Supreme Court rejects curative petition of Vinay and Mukesh. Mukesh files mercy plea before President. Jan 17: Tihar jail authorities seek fresh date for hanging. Feb 1 at 6 am decided as the date and time of execution Jan 25: In an attempt to save himself, Mukesh moves to the apex court against trashing of mercy plea. Jan 30: Supreme Court dismisses the curative petition filed by Akshay. Jan 31: Supreme Court quashes Pawan Gupta's plea that sought review of the rejection of Gupta's juvenility claim. Feb 5: High Court dismisses Centre's plea against trial court order; says all 4 convicts have to be hanged together. After repeated rounds of petitions being filed and rejected, the Supreme Court rejects the curative petition filed by Pawan Gupta on March 19 and held an unprecedented late night hearing on the case. Pawan Gupta's plea against the rejection of his second mercy petition was dismissed during this late night hearing. On March 20, all the four convicts in the case were hanged at 5:30 .

### **WHAT HAPPENED TO THE YOUNGEST ACCUSED IN THE NIRBHAYA CASE?**

Accused Ram Singh committed suicide in jail even before his conviction. The juvenile later served three years in a reformation home and was released. The reports suggested that the juvenile was 'one of the most brutal' among all the accused as he attacked the victim with an iron rod.

### **ROLE OF POLICE AND CONFESSION OF THE ACCUSED:**

The Delhi gang rape of 2012 tipped the already wobbly scale of crimes against women in India. In the absence of any



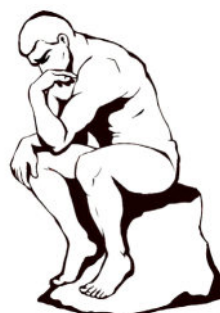


### DCP CHHAYA

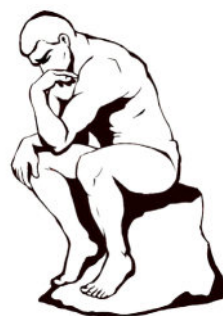
**Image Source:** <https://www.indianwomenblog.org/ahead-of-netflixs-delhi-crime-story-dcp-chhaya-sharma-on-how-it-felt-to-lead-the-nirbhaya-case/>

worthwhile clues, DCP Chhaya knew that if the case was to be cracked, locating the bus was critical. All that was known from Awindra's account, besides its colour and the stripes painted on its sides, was that it had a separate driver's cabin, red seat covers and yellow curtains, and that the hubcap of the front left wheel was missing. She summoned the ten best inspectors of the south district to the Vasant Vihar police station with their respective teams. Inspector Rajender Singh of the Special Staff—an experienced and versatile officer—was the star investigator amongst them. DCP Chhaya allocated specific jobs to each inspector and made the police station her mission control room. None of them went home for five days and nights, not until the last accused had been arrested. One team left for the Delhi Transport Department to get details of all white buses registered with them. The police had the details of 320 white buses. Inspector Rajender Singh and two other teams scoured the CCTV footage from all hotels and guest houses on the national highway opposite the crime scene. Interestingly, the police teams noticed a white bus with 'Yadav'

painted on its side in the CCTV footage of Hotel Delhi Airport. The bus was seen coming from Delhi, seemingly heading for Gurugram, but within nineteen minutes, at 9.53 p.m., it reappeared on the screen, heading again in the same direction. The obvious conclusion was that it had taken a U-turn from under the flyover located close by, proceeded towards Delhi instead of going towards Gurugram, and had again turned around to drive towards Gurugram. The CCTV footage of the white bus was shown to Awindra, who confirmed that it indeed looked like the bus he had boarded. He looked intently at the front left wheel, and sure enough, it did not have a hubcap. The search for the white bus had now zeroed in on those that had Yadav written on their side. The teams began to question the transporters if they knew anyone who owned buses with Yadav written on their vehicles. The name of one Dinesh Yadav of Noida, a city in Uttar Pradesh, came up. He owned a fleet of buses, most of which had his surname written on them. When questioned, Dinesh confirmed that he did indeed own a bus that had red seat covers, yellow curtains and Yadav written on its side. The bus, as disclosed by him, was on charter with Birla Niketan School in Saket. He further disclosed that the driver was named Ram Singh and lived in one of the shanties of Guru Ravi Das Camp, a slum abutting Sector 3 of R.K. Puram in south Delhi. The driver usually parked the bus



in the vicinity of his abode. By then it was 11 a.m. on 17 December, the day following the crime. A police team rushed to Guru Ravi Das Camp and saw the bus parked there... On inquiring where the bus's driver resided, the jhuggi was found and Ram Singh (aged thirty) was nabbed. He took the police team to the bus, which was inspected in the presence of witnesses. It had been washed from the inside and every effort made to obliterate all traces of evidence. A forensic team was called, which recovered two bloodstained iron rods, a debit card in the name of Asha Devi (Nirbhaya's mother), and traces of blood, hair and spit from inside the bus. A T-shirt and a pair of bloodstained brown slippers were also seized. Despite the seizure of the bus and other pieces of incriminating evidence, Ram Singh, when brought to the police station, denied his involvement in the crime. He tried to pass on the blame to his brother Mukesh, who, he said, had taken the bus the previous evening without his permission. On being asked about Mukesh's whereabouts, Ram Singh said he had run away to their village in Rajasthan. It was only at 4 p.m. on 17 December—the day after the crime—that Ram Singh (aged thirty-four) accepted his involvement and gave a graphic account of the sequence of events. The details given by him matched Awindra's statement. He was placed under arrest. From the accused Ram Singh the role of Akshay Kumar Singh aka Thakur had come to light. Akshay worked with Ram Singh as a cleaner of the bus. Ram Singh knew the mobile number Akshay called to speak to his family back home. He shared the number with the police; it was registered with a service provider in Aurangabad, Bihar. A team under Inspector Rituraj was dispatched by air to Patna on 18 December... On 19 December, the Delhi Police team established contact with the staff of the police station in Tandwa, in whose jurisdiction Akshay's village was located... They planned to recce Akshay's village stealthily so as not to alarm its residents... On 21 December, Akshay was spotted by a chowkidar getting off from a train at Tandwa railway station and then walking towards his village. The chowkidar lost no time in informing Inspector Rituraj, who rushed with his team and arrested Akshay. The news of Akshay's arrest was conveyed before noon on 21 December. Raju—the

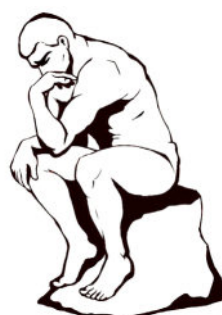


juvenile in conflict with the law—was the only accused left to be arrested. He was the one who had hailed Nirbhaya and Awindra at the Munirka bus stand to board the bus. Ram Singh had disclosed that Raju had stayed with him on the night of 15 December—the day prior to the crime. The two knew each other as they had worked together two years earlier in the trans-Yamuna area.

The police did not know Raju's real name, his cellphone number or his address. None of the other accused knew anything about him. In the absence of any specific clues, the police went to the trans-Yamuna area, which has a population of 50 lakh in a 50 square kilometre area. It was much like looking for the proverbial needle in a haystack. Police teams fanned out in the area and started asking for a boy named Raju at various bus depots located in east Delhi. The persons who claimed that they had met Raju were requested to be part of the search teams to identify the boy. The search for Raju continued for three days and nights. Finally, a local resident, who had joined the police search for Raju, spotted a youngster who he thought was Raju in a bus plying between the Anand Vihar bus terminal and Noida. The search then zeroed in on buses plying that route. On the morning of 21 December, the spotter identified Raju on a bus returning to Anand Vihar from Noida. As soon as this information was relayed to the police, a team rushed to the Anand Vihar bus station and nabbed the juvenile. With Raju's arrest, all accused involved in the dastardly crime were in police custody. Much before SI Arvind reached Delhi with Mukesh on the afternoon of 18 December, Ram Singh had begun to sing like a canary. He disclosed that in the early evening of 16 December (a Sunday) Pawan Kumar, a fruit vendor, Vinay, a gym instructor, Mukesh, Ram Singh's younger brother, Akshay Kumar Singh, a cleaner on Ram Singh's bus, and Raju, a juvenile, met in his jhuggi and had a small 'party'.

They decided to set out together in Ram Singh's bus to have some 'fun'. They first lured Ram Adhar (aged thirty-five), a carpenter, to board the bus and robbed him of Rs 1500 along with his other belongings and dumped him near IIT Gate. They then drove towards Munirka from where they picked up the hapless couple.

Ram Singh then pointed out Pawan's hutment in Guru Ravi Das Camp from where he was picked up at 1.15 p.m. on 18 December. Vinay was arrested from outside his gym, again in Ram's neighbourhood, at 6 p.m. the same day. The data from both Pawan's and Vinay's phones corroborated their presence along the route that the bus had taken. The police had four of the six accused in our custody. It was time for us to let the world know of the breakthrough in the case and of the arrests we had made. It was 10.20 p.m. on 16 December 2012. The incessant traffic on National Highway 8 between Delhi and its satellite city, Gurugram, refused to abate even though it was well past peak hours... The biting cold of Delhi winter was yet to set in, but for two youngsters—one male and one female—who had been lying by the roadside without a stitch of clothing on them for almost forty minutes, it was chilling to the marrow. Raj Kumar and his partner Surender Singh, of EGIS Infra Management India Ltd, a firm charged with the maintenance of the national highway, drove slowly in their jeep in the left lane of the highway from Gurugram to Delhi. They were looking for stretches in disrepair that might need the attention of their superiors. As they crossed the U-turn under the Mahipalpur flyover, they heard cries of 'bachao, bachao (help, help) from the left flank of the road. They were startled to see a young man and a young woman sitting naked, covered in blood, shivering and writhing in pain. They immediately stopped and called Rampal Singh in their company's control room, informed him of what they had seen and requested him to call the police. Rampal Singh lost no time in calling the Delhi Police control room (PCR) on the emergency telephone number, 100, which dispatched the nearest PCR van, Zulu 54, to the spot. The police team rushed the severely injured couple to Safdarjung Hospital, which was about 10 kilometres away. En route, the injured, despite being in a state of shock, narrated snatches of their nightmarish ordeal to constable Ram Chander, a summary of which he passed on to the central PCR. On arrival at the hospital, the male victim, by then identified as Awindra Pandey (aged twenty-eight), was admitted to the casualty section of the hospital. The female victim, Nirbhaya (a name given to protect the identity of the girl and universally accepted) (aged twenty-three), was taken to the gynaecology department as her private parts were bleeding profusely. The PCR had by then informed DCP Chhaya Sharma of the incident. Realizing the gravity of the situation, she rushed to the hospital. Dr Sachin Bajaj, who was treating Awindra, had already heard from his patient the details of the ordeal the victims had been through. In



brief they were as follows: Awindra, an engineer, and his girlfriend Nirbhaya, a physiotherapy intern, had gone to the Select City Walk mall in Saket in south Delhi to watch a movie.... After the show they exited the mall at around 8.30 p.m. Unable to get an autorickshaw to Dwarka, where they lived, they took one to the Munirka bus stand from where they hoped to get a bus that would take them to their destination. After a while, they saw a white bus with yellow and green stripes on its sides approach them and stop right where they stood. It was a private chartered bus—generally not authorized to ply on commercial routes—from which a young boy was calling out for passengers going to Dwarka and Palam Mod. Awindra and Nirbhaya, unsure of when the regular bus would come and anxious to reach their homes before it got too late, decided to board the private bus. Little did they know they had boarded a bus to hell. As they took their seats they saw three unkempt youngsters sitting in the driver's cabin with the driver, while two others sat right behind in the front row of passenger seats—one on the left and the other on the right end. There were no other passengers in the bus. Instinctively, the young couple felt that something was not quite right. One of the two seated in the front passenger seats walked towards Awindra, ostensibly to collect the bus fare. They paid twenty rupees between them. It dawned on them that the bus had not waited for any other passenger to board and had left with only the two of them, soon after they had got in. Strangely, the bus had curtains that were all drawn to ensure that nothing outside was visible to them. The door they had come in through had been locked from the inside after they had boarded. As the bus drove towards Dwarka and reached the flyover leading to the airport, the three boys emerged from the driver's cabin. They began to abuse Awindra, asking him where he was taking the girl so late in the night. Nirbhaya and Awindra retaliated to the verbal and physical abuse hurled at them. In the commotion that ensued, they heard one of the goons call out the names Vinay and Pawan, commanding them to bring out iron rods. Soon Awindra was hit on the head and legs with iron rods and he fell to the floor of the bus. Nirbhaya shouted for help and tried calling the police on her mobile. She was pushed to the rear end of the bus and then pinned down on a passenger seat meant for three, where all six men took turns to rape her. She too was robbed of her belongings. Having satiated themselves, the men decided to get rid of the injured couple, and if possible, kill them. Awindra heard one of the assailants say that the couple was not to be left alive. Nirbhaya was dragged by her hair to the front



door and thrown out along with her companion, The bus tried to reverse and crush them to death but somehow the two managed to roll away and escape. On the evening of 17 December—the day Ram Singh was arrested—SI Arvind Kumar of the Special Task Force of the south district left with a police team of six for Karoli in Rajasthan, 300 kilometres away from Delhi. His mission was to nab Mukesh, Ram Singh's younger brother. The police team drove all night The village was 2 kilometres away from the nearest road, and the approach to it was not motorable. The police party had to cover the distance on foot. The hut in which Ram Singh and Mukesh's parents lived was not in the main village but in the middle of an agricultural field, a little distance away. What stood between the police team and the hut was a river with neither a bridge across it nor any ferry service. The police team realized that they would have to swim across it. One member of the team, a consummate swimmer, was sent in advance to check how deep the river was. Luckily, it was crossable, but there was one difficulty—the AK rifles and pistols the policemen were carrying would have to be protected from being submerged in water. Undeterred, the policemen stepped into the icy waters of the river with their weapons raised above their heads. A few of them were not tall enough to keep their heads above water and had to walk on their toes... Mukesh, who had been hiding out with his parents, was caught unawares. The police team, with Mukesh in custody, had to cross the river again and hurry to their vehicles. The police party, without wasting any time, drove back to Delhi.

**LAWS GET A RELOOK:**

The nationwide public outcry, following the incident, led to the passing of the Criminal Law (Amendment) Act in 2013 which widened the definition of rape and made punishment more stringent. Parliament made the amendments on the recommendations of the Justice J.S. Verma Committee, which was

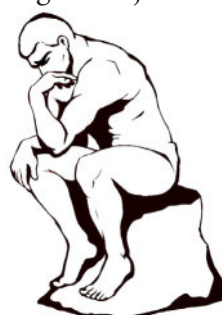
constituted to re-look into the criminal laws in the country and suggest changes. The 2013 Act, which came into effect on April 2, 2013, increased the jail term in most sexual assault cases and also provided for death penalty in rape cases that cause death of the victim or leaves her in a vegetative state. It also created new offences, such as use of criminal force on a woman with intent to disrobe, voyeurism and stalking. The punishment for gang rape was increased to 20 years to life imprisonment from the earlier 10 years to life imprisonment. Earlier, there was no specific provision in the law for offences such as use of unwelcome physical contact, words or gestures, demand or request for sexual favours, showing pornography against the will of a woman or making sexual remarks. But, the 2013 Act clearly defined these offences and allocated punishment. Similarly, stalking was made punishable with up to three years in jail.

**POLITICIANS TAKE TO SOCIAL MEDIA:**

Nirbhaya's case shows flaws, Delhi Chief Minister Arvind Kejriwa commented Hours after the four Nirbhaya convicts were hanged, Delhi Chief Minister Arvind Kejriwal on Friday said it is a day to take a resolution to not allow another similar incident to happen. Taking to Twitter, Kejriwal also called for a collective resolution by police, courts, states and the central government to remove loopholes in the system “to let this not happen” to any daughter again. “After seven years, Nirbhaya case convicts were hanged. The chief minister said there is a need to ensure that police investigations are completed in a swift manner, adding that there is also a need to change the judicial system so that

in such cases, victims do not have to wait for seven long years but get justice within six months. “The Delhi

.....  
**“The nationwide public outcry, following the incident, led to the passing of the Criminal Law (Amendment) Act in 2013 which widened the definition of rape and made punishment more stringent ”**



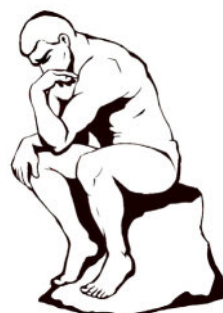
government does not have any power over police and judicial system, but we are working towards strengthening the other systems to provide security to every woman in the city,” he said. The government is installing CCTV cameras across the national capital besides installing streetlights in the city to cover all the dark spots, he said, adding that the AAP dispensation has deployed marshals in buses plying in Delhi. “We will take all essential steps to ensure safety and security of women. Full one year later and more than 2 years after the rape, the Delhi High Court on March 13, 2014 upheld the death penalty on the four and it was not until three years later on May 5, 2017 that the apex court finally upheld it. And they were not hanged in 2017, 2018 and 2019 and only in 2020 after many delays.

### **WHAT HAS CHANGED ON GROUND ZERO?**

A knee jerk reaction is typical when public angst is at its peak but in terms of perceptible changes the impact has been deplorable. Laws have failed either to deter or reform and the ordeal goes unabated from Kathua, Cyberabad, Hathras, Badaun to nearby Gohpur, India’s daughters are highly unsafe. A toxic combination of patriarchy and male chauvinism has made the emergence of a society with respect, equality, safety and dignity for women highly unlikely.

A slew of measures announced by the Government after this incident included the establishment of the Nirbhaya Fund for women safety reveal gross underutilization indicating the lack of political will to tackle the menace head on. As on December 2019, out of 63% provided to the states and union territories to the tune of 2264 crore out of 3600 crore, around 89% of the funds were not utilized by states and union territories. Only Uttarakhand and Mizoram could utilize only 50 percent of the funds while Maharashtra showed a zero percent utilization. Out of the allocated corpus of 2624 crore only miniscule amount of 252 crore could be utilized. The Kailash Satyarthi Children’s Foundation could utilize only 11% of the fund. The announcement for the fund was made in 2013 and the funds started to trickle in from 2015. In terms of crime against women, particularly rape, the graph has not come down.

It is a sorry fact that Indian laws are largely toothless and very lax laws inadvertently favour criminals. It is these many glaring loopholes which are exploited by unscrupulous lawyers who egg on these criminals to file one case after another and prolong and delay their hanging. These loopholes must be plugged.



Generally, the families of rape victims don’t come out to fight their daughters’ cases in public but Nirbhaya’s parents carried on a spirited and relentless struggle that finally culminated in the execution of these unwanted quartet. We all know that in India, the name of the rape victim should not be revealed due to the fear of the family inviting social stigma. In fact, in Nirbhaya’s case we even know the victim’s name as Jyoti Singh after her mother herself revealed the girl’s name and her parent’s names as Badrinath Singh and Asha Devi. These are all in the public domain. It is because of their spirited quest for justice to Nirbhaya that the four have been sent to the gallows, otherwise they will be still cooling their heels in prison. At least from now on, rape cases like this must be disposed of within a reasonable timeframe and the culprits hanged at the earliest.

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# ARMED FORCES SPECIAL POWERS ACT

*[Cited to be a relic of the colonial past, Raseen critically examines the Armed Forces Special Powers Act with a strong claim for its removal]*

## INTRODUCTION:

The Armed Forces Special Powers Act (AFSPA), 1958 is an act of the Parliament of India that grants special powers to the Indian Armed Forces the power to maintain public order in “disturbed areas”.

When differences in the communities arise on the basis of race, religion, language, region and caste and anarchic situation arises then the state or central government is entitled to declare that area as “Disturbed Area “. AFSPA is levied only in those areas which have been declared as disturbed areas. Army and armed forces are sent in the area only after the implementation of this law.

## HISTORY:

The battle against the Armed Forces Special Powers Act is a long, bitter one. On August 15, 1942, Lord Linlithgow, (the Viceroy of India) promulgated the Armed Forces

Special Powers to suppress the Quit India Movement launched by Mahatma Gandhi . Indian protesters targeted and burned down police offices and railway and telegraph lines, which the British saw as designed to hamper the war effort against an impending Japanese invasion. Linlithgow responded with violence as 2,500 were killed in police shootings on Indian protesters, tens of thousands were arrested, rebellious villages were torched, and protesters were flogged and tortured.

In August 1947, freedom from British rule and the birth of India and Pakistan were accompanied with genocidal violence and the mass migration of Hindus and Sikhs from Pakistan and of Muslims from India. A few years into Indian independence, Jawaharlal Nehru, the first Prime Minister, faced his first insurgency in Naga districts of Assam, along the Burmese border. Baptist missionaries had converted a majority of the Nagas to Christianity. In



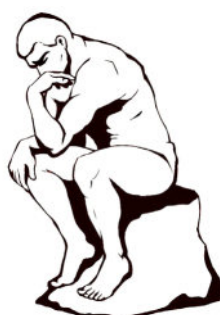
responded by sending in thousands of Indian army soldiers and paramilitary men from the Assam Rifles to crush the rebellion. An intense cycle of violence followed. To further arm his counterinsurgents and provide them with legal protection, Nehru's government passed the Armed Forces Special Powers Act (1958) in the Indian parliament. Very few lawmakers spoke in opposition to the law. "We want a free India. But, we do not want a free India with barbed wires and concentration camps, where havaldars can shoot at sight any man," a dissident member of the parliament from Orissa, told the house.

Prime Minister Nehru echoed Churchill and Linlithgow as they had set about crushing the Quit India Movement with violence and legal protections of the Armed Forces Special Powers Ordinance. The discontent in the borderlands of Nehru's India wasn't limited to the Naga areas. Signs of trouble and disillusionment with being ruled by a bureaucrat from New Delhi were growing in the former princely state of Manipur, which had merged with India in 1949. In 1964, the year of Nehru's death, a separatist militant group seeking independence from India, the United National Liberation Front, was formed in Manipur. India reacted to the centrifugal force by granting statehood to Manipur in 1972, which brought an elected local government and greater financial resources. A few years later, inspired by Maoist ideas, some Manipuri rebels traveled to Lhasa and, with Chinese support, formed an insurgent group, the People's Liberation Army, which sought Manipuri independence. Several smaller insurgent groups came into being. The number of persons killed in acts of violence went up from two in 1978 to 51 in 1981, according to the South Asian Terrorism Portal. India responded by declaring Manipur a "disturbed area" and imposed the Armed Forces Special Powers Act in late 1980. A brutal cycle of insurgency and counterinsurgency has continued ever since, claiming several thousand lives.

**POWERS UNDER THE AFSPA:**

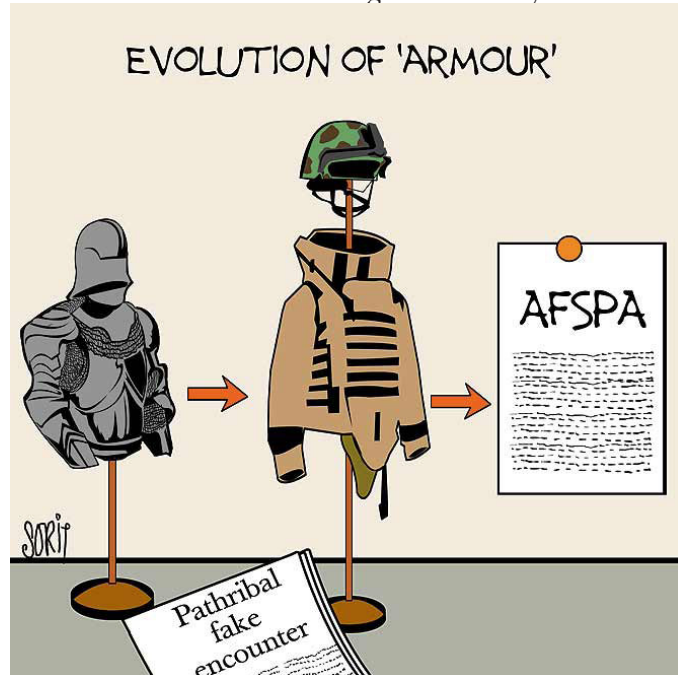
Here are the powers given to the Armed forces under the ASFPA:

1. Any suspect can be arrested without a warrant.
2. Armed forces can search any house without any warrant and required force can be used to search it.
3. Under this law the armed forces have the authority to prohibit gathering of five or more persons in an area.
4. In some cases the forces can open fire on



the disturbing factors after giving due warning if they found any suspicious person.

5. If a person is repeated offender and tries to disturb the peace of the area, then armed forces are entitled to use force till his death.
6. If the Armed Forces suspect that any militant or offender is hiding in any house/building then the site or structure can be destroyed by the forces.
7. Any Vehicle can be stopped and searched.
8. Even in the case of wrongful action by the armed



Featured Art: Sorit Image Source: <https://www.outlookindia.com/photos/topic/afspa/103211?photo-124291>

forces, legal action is not taken against them

**SECTIONS OF AFSPA:**

There are five Sections of AFSPA. They are:

Section 3: Section 3 of the Ordinance powers the Governor of Assam and the Chief Commissioner of Manipur to declare the whole or any part of Assam or the Union territory of Manipur, as the case may be, to be a disturbed area.

Section 4(a): if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances.

Section 5: Arrested persons to be made over

to the police.—Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Section 6: Protection to persons acting under Act.—No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

Section 7: Repeal and Saving.— [Repealed by Amending and Repealing Act, 1960 (58 of 1960), First Schedule, sec. 2 (26-12-1960)].

### APPLICATION OF AFSPA IN DIFFERENT AREAS:

Assam: The Assam government on Tuesday said it has extended the Armed Forces (Special Powers) Act, 1958 (AFSPA) in the state for six more months with effect from August 28. The state has been declared a “disturbed area” on account of recent insurgent attacks on security forces in the Northeast and recovery of illegal arms and ammunition from different areas of Assam, official statements. Many civil society groups and activists have been demanding the withdrawal of the draconian law from the state. The AFSPA, which empowers security forces to conduct operations, arrest anyone anywhere without prior notice, has been continuing in Assam since November 1990. It is renewed every six months.

Nagaland: The Ministry of Home Affairs (MHA) has declared the entire State of Nagaland as a “disturbed area” for six more months under the Armed Forces (Special Powers) Act (AFSPA) that empowers security forces to conduct operations anywhere and arrest anyone without prior notice. The AFSPA has been in force in Northeast since 1958 and Nagaland acquired Statehood in 1963.

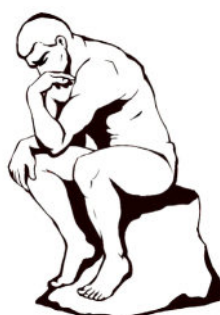
In a notification issued on Wednesday, the MHA said the government was of the opinion that the area comprising the whole state of Nagaland was in such a “disturbed and dangerous condition” that the use of armed forces in aid of the civil power was necessary.

“Now, therefore, in exercise of the powers conferred by Section 3 of the Armed Forces (Special Powers) Act, 1958 (No. 28 of 1958) the central government hereby declares that whole of the State of Nagaland to be ‘disturbed area’ for a period of six months with effect from 30 December, 2020 for the purpose of that Act,” the notification said.

Manipur: The recent developments in Manipur have once again brought into focus the question of application of the Armed Forces Special Powers Act 1958 (AFSPA) in Northeast India. Due to the disturbance and insurgency in the state, the Government of India promulgated the Armed Forces Special Powers Act 1958 in Manipur State. Since 1980, the whole of Manipur has been a “disturbed area”. The 1972 amendments to AFSPA extended the power to declare an area disturbed to the Central Government whereas in the 1958 version of AFSPA, only the state Governor had the power. The notification in Manipur issued in 1980 still continues even after 24 years, and thereby they feel that they have been deprived of the spirit of liberty, freedom and democracy for too long a period.

Arunachal Pradesh: The Centre has extended the Armed Forces (Special Powers) Act in three districts of Arunachal Pradesh and its eight police station areas bordering Assam by another six months, in view of continuing activities of banned

.....  
**“The 1972 amendments to AFSPA extended the power to declare an area disturbed to the Central Government whereas in the 1958 version of AFSPA, only the state Governor had the power.”**





**Image Source:** <https://www.thehinducentre.com/the-arena/current-issues/article24790397.ece>

insurgent groups of the Northeast. According to a notification issued by the Ministry of Home Affairs, Tirap, Changlang and Longding districts of Arunachal Pradesh and eight police stations bordering Assam were declared “disturbed” areas under the Armed Forces (Special Powers) Act (AFSPA), 1958.

Now, therefore, Tirap, Changlang and Longding districts in Arunachal Pradesh and the areas falling within the jurisdiction of the following eight police stations in the districts of Arunachal Pradesh, bordering the State of Assam, are declared as ‘disturbed area’ under Section 3 of the Armed Forces (Special Powers) Act, 1958 up to March 31, 2019 w.e.f. October 1, 2018, unless withdrawn earlier,” the notification said.

The police stations include Balem and Bhalukpong police stations in West Kameng district, Seijosa police station in East Kameng district, Balijan police station in Papumpare district, Namsai and Mahadevpur police stations in Namsai district, Roing police station in Lower Dibang Valley district and Sunpura police station in Lohit district. The decision was taken following a review of the law and order situation in the three districts and eight police station areas concerned, a home ministry official said. Banned insurgent groups National Socialist Council of

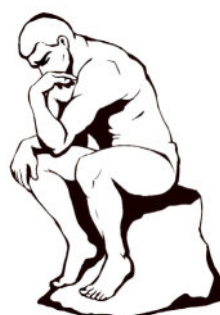
Nagaland (NSCN-K), United Liberation Front Of Assam (ULFA) and National Democratic Front of Boroland (NDFB) are active in these areas of Arunachal Pradesh.

### NOTABLE CASES SURROUNDING AFSPA:

Here are few infamous cases, in view of the sensitization towards human rights and how there are difficulties in ascertaining the punishment to security personals who are surviving with impunity. It is also evident that these atrocities are still continued. There are hundreds and thousands of cases like these where human rights violations reported in areas where AFSPA is imposed (North East region and J&K).

Case of Inderjit Barua’s plea:

**JUDGMENT-** Prakash Narain, J. What is most precious to any man is his life. Next to that his personal liberty. ‘That is why life and liberty are two basic human rights which are ensured to every man, woman and child in any civilised society. This is recognised by our Constitution and is enshrined as a fundamental right in Article 21. The procedure established by law, however, cannot be arbitrary. This has been recognised by our Constitution by enacting provisions like Article 14, Article 19 and Article 21. In some cases, restrictions have to be placed upon free exercise of individual rights to safeguard the interests of the society; on the other hand, social control which exists for public good has got to be restrained lest it should be misused to the detriment of individual rights and liberties. Likewise S. R. Das, J opined: “Personal liberties may be compendiously summed up as the



right to do as one pleases within the law. I say within the law because liberty is not unbridled license. Therefore, putting restraint on the freedom of wrong doing of one person is really securing the liberty of the intended victims. If a law ensures and protects the greater social interests then such law will be a wholesome and beneficent law although it may infringe the liberty of some individuals, for, it will ensure for the greater liberty of the rest of the members of the society. At the same time our liberty has also to be guided against executive, legislative as well as judicial usurpation of powers and prerogatives.”

The two enactments challenged before us in C.W. 832 and 833 of 1980 are the Assam Disturbed Areas Act, 1955 enacted by the Assam legislature and the Armed Forces (Assam and Manipur) Special Powers Act, 28 of 1958 read with the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972 (No. 7 of 1972) enacted by the Parliament.

Inderjeet Barua filed a petition under Article 226 of the Constitution of India in the Gauhati High Court which was registered as Civil Rule No. 182180. Rule was issued by the High Court on April 7, 1980. An ex-parte stay of the operation of the aforesaid two notifications of the Governor of the State of Assam issued on April 5, 1980 was ordered. A similar petition under Article 226 of the Constitution of India was filed by Hem Kant Sharma in the Gauhati High Court which was registered as Civil Rule 192[80]. The application for interim relief in Civil Rule No. 182180 came up for hearing before a learned single Judge of the Gauhati High Court when opposition was filed by the respondents. The Union of India and the State of Assam had filed special leave petition in the Supreme Court of India, but the Supreme Court had not varied the ex-parte stay order given by the High Court. It had only directed that the stay application be disposed of on April 18, 1980 after hearing both parties. The High Court was further directed to treat the material placed before the Supreme Court in the Special Leave Petition as material placed before it and also give liberty to the parties to produce such other material as they desire to produce. After the Assam High Court had passed orders in the application for interim relief, transfer petitions were moved by the Union of India and the State of Assam in the Supreme Court in regard to some matters. Accepting the petitions various cases including the above four with which we are presently concerned were transferred to this court. Finally the cases have been heard with consent of learned counsel for the parties in

the last week and we now proceed to judgment.

The Assam Disturbed Areas Act, 1955 was passed by the Legislature of Assam. The long title of the Assam Act is, “An act to make better provision for the suppression of disorder and for the restoration and maintenance of public order in disturbed areas in Assam.” The Preamble of the Assam Act reads: “Whereas it is necessary to make better provisions for the suppression of disorder and for the restoration and maintenance of public order in the disturbed area in Assam”. Section 2 of the Assam Act defines “Disturbed area” to mean an area which is for the time being declared by notification under Section 3 to be a disturbed area. Section 3 of the Assam Act lays down that the State Government may by notification in the official Gazette declare that the whole or any part of any district of Assam as may be specified in the notification to be a disturbed area.

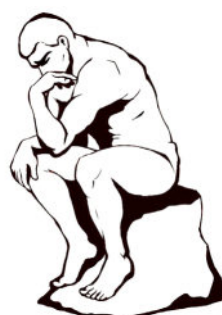
No one can dispute that the States or Union Territories to which the provisions of the impugned Statutes are made applicable are border States in the North East part of our country. China and Nepal in the North and North West, Burma in the East and Bangladesh in the South have common borders with these territories of India. Assam particularly has been a region not free from difficulties. for centuries

Author: P Narain  
Bench: P Narain, B Kirpal

Some other cases are:

Kunan Poshpora (J&K) : On 23 rd February 1991, a search operation was conducted by Indian army in Kunan Poshpora village of Kupwara district. During this search operation, around 100 women including pregnant women were allegedly raped by army persons in front of villagers. No clear inquiry was made by government. Later in the year 2014, the police officer who first visited the village to record testimony told that he was threatened many times to not to make report public. Government tried its best to make this case as ‘baseless’ and on the other hand, Chief Justice of J&K High court in his findings told that he never saw such a case where even normal investigative procedures were ignored. A case is still running in Supreme Court of India on this issue.

Malom (Imphal District, Manipur) : It was 2 nd November 2000, when at Malom, a place near Imphal, Assam Rifles fired upon 10 persons at a bus stand and they got killed. In these persons, even a 60 year old lady and 18 year old bravery award winner also got killed. This case sparked the anger in Manipur.

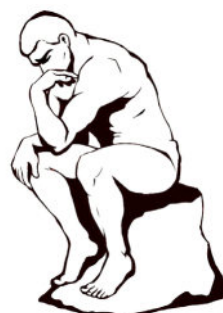


Protest was organized. Irom Sharmila started her fast with demand to repeal the act AFSPA. However, still nothing happened.

Pathribal (Anantnag district, J&K) : On 25 th March 2000, at Pathribal in J&K, 5 civilians were picked up by Rashtriya Rifles and allegedly made as 'foreign militants' and as the main accused persons who were responsible for Chhatisinghpura case. Local people protest against this and calimed that these were civilians and were not involved in any such activity. Initially, no case was lodged as defined with the impunity granted under AFSPA but later when protest erupts, CBI was asked to investigate the case. CBI in its investigation submitted report and found guilty a Brigadier, a Lt Col, two majors and a subedar of 7 Rashtriya Rifles for a staged encounter where civilians were picked up from Anantnag district . These encounters were told as 'cold blooded murders'. Supreme Court of India, with findings of CBI told Indian army in the year 2011 for court martial, (as sanction for prosecution under civilian law could not be provided under AFSPA) , however after two years army closed the case with no actions on accused personals.

Manorama Killing (Imphal Distrcit, Manipur) : It was the night of 10 th July 2004, when Assam Rifles went to house of Manorama at Imphal, Manipur at night, tortured her at her house before her brother and mother, then picked her up. In the morning, dead body was found at Ngariyan Yairipok road with bullets injuries in her private parts. Massive protest was organized by people, even the infamous naked protest also happened but case under criminal charges could not be lodged. A local judicial inquiry was done but report was not made public. A PIL in Supreme Court of India is still going on but no verdict has been awarded yet.

Shopian Case (Shopian district, J&K):: on 29 th May 2009 in Shopian (J&K), two women named Aasia (age approx 17) and Neelofar (age approx 22) went missing from their orchard on their way back to home. Their dead bodies found on next day morning. People alleged it as murder and rape by security forces who were camped nearby. Initially, no FIR was lodged and police told that postmortem report cleared injuries over private parts. However people believed that police report about postmortem is fake, protests were continued by people and later J&K govt formed a judicial panel. Under judicial inquiry, Forensic lab report established the gang rape of both the women. Besides few suspension and transfers from



police department, nothing has happened in this case. 1528 cases of extra judicial killings: In a writ petition filed in Supreme Court of India (SCI), it was told that during May 1979 to May 2012 , approximate 1528 cases belongs to extra judicial killings. Supreme Court picked 6 random cases from the list and formed a high power commission under Justice (retd) Santosh Hegde and two others members to inquire about these 6 cases. Commission submitted its report to SCI stated that all 6 cases are found cases of fake encounters where no criminal records found for these persons who got killed. Case is still in SCI.

### **ABUSES:**

Even as it mulls over the future of the Armed Forces Special Powers Act (AFSPA) in the northeast, the Union home ministry has released data revealing human rights violations under the controversial Act are the highest in Jammu and Kashmir, followed by Assam. The documents which have been made public through a Right to Information (RTI) query filed by a human rights activist, show that Jammu and Kashmir tops the list of human rights violations committed under the AFSPA, with 92 complaints against the Indian Army and paramilitary forces in 2016. Assam comes in second with 58 complaints, Manipur third at 21, while Meghalaya and Arunachal Pradesh follow next at five and six complaints, respectively.

Of the 186 complaints received, 74 were against the Indian Army. Death in army encounters saw 24 complaints. Death in army firings saw 16 complaints, while there were 21 cases of alleged fake encounters and 10 cases of rape and abduction.

The home ministry has made it clear that all security personnel deployed in conflict zones governed by AFSPA have to abide by a strict code of conduct.

“For preventing human rights violations under the AFSPA, guidelines have been issued for the armed forces. Violation of these guidelines by members of the Armed Forces makes them liable for prosecution under the Army Act and the respective Acts of the CAPFs (central armed police forces),” a home ministry official said on condition of anonymity.

An army officer who did not wish to be identified said the human rights cells of the Army and the CAPFs closely monitored alleged human rights violations.

Experts and former army officials, however, stated that in conflict regions such as Jammu and Kashmir—given the recent onslaught of



stone-pelting on the forces—“human rights violations” took on a very different meaning.

An expert on the issues of the northeast, however, stated that the matter was totally different in the region—with Assam, Arunachal Pradesh, Meghalaya, Manipur and Nagaland under AFSPA, the armed forces enjoyed impunity despite gross violations.

The expert said that a majority of the “encounters” carried out in the northeast were staged.

“There is a huge mafia nexus in the region, especially Assam that identifies people who can’t leave a trail and whose disappearance will not be reported. They are then sold to the security forces, passed off as ‘militants’ and killed in ‘encounters’,” said Kishalay Bhattacharjee, author and expert on northeast India. On 14 July, in a breakthrough judgment, the Supreme Court for the first time took cognizance of 1,528 cases of fake encounters under AFSPA in Manipur, ordering a Central Bureau of Investigation (CBI) probe into 97 of them.

Ordinarily, if there are human rights violations, the complainant can approach the police station, which conducts an immediate inquiry into the allegation and then lodges a first information report (FIR). The security forces too conduct parallel semi judicial processes. At the same time, the CBI can also be ordered by a higher court to investigate or re-investigate such allegations.

A New York Times article says, since 1958, India’s Armed Forces Special Powers Act, or AFSPA, has fostered a culture of impunity among India’s armed forces that has led to repeated, documented human rights abuses against Indian civilians. In the wake of fresh calls to repeal the law, it’s time for the government to do what prior governments have not: stand up to India’s military, which has long resisted any modification of the act and move to have AFSPA repealed.

Amnesty International published a damning report on abuses in Jammu and Kashmir, and called again for an end to the law. Indian legal authorities and human rights groups, as well as international groups and the United Nations, have urged repeal. In 2008, Human Rights Watch published a major report on AFSPA calling for repeal. In 2012, the United Nations said the act “clearly violates international law.” The year after, a former chief justice of India, J.S. Verma, Chairman of a committee charged with reviewing Indian law after the brutal rape of

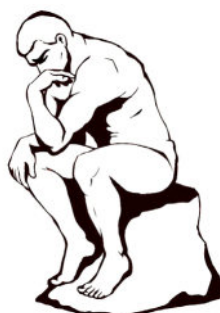
a student in New Delhi, said there was an “imminent need” to assess continued use of the law.

The government should not wait to act. In May, the state of Tripura, with the federal government’s approval, repealed AFSPA, saying it was no longer necessary. The Peoples Democratic Party, which governs Jammu and Kashmir is calling for repeal there. India’s home minister, Rajnath Singh, said this month he hoped a time would come when Afspa “should not be needed anywhere in the country.” That time is now.

In conclusion, it can be said that this Act violates Human Rights because the right to life is violated by section 4(a) of the AFSPA, which grants the armed forces power to shoot to kill in law enforcement situations without regard to international human rights law restrictions on the use of lethal force. Also, shoot to kill violates article 21 and searching houses and arresting without warrant violates article 22. It also violates the Right to Assembly, Liberty, Life and Fundamental Rights.

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# PERSISTENCE OF CASTE A CASE STUDY INVOLVING POPULAR CULTURE

*[The use of caste in popular culture is sought to be examined by Tanisha as she compares two movies and the underlying impact while taking a close look at the existing legal provisions]]*

## Caste in the Religious Texts:

The Manusmriti contends that Brahma is the creator of the Universe. Brahmins, the priests, are said to have come from his forehead; Kshatriyas or warriors from his arms; Vaishyas or the merchants from the thighs and Shudras are said to have come from his feet.

It is called “Caste” System, wherein “caste” is the English word for “jaati”, meaning “community”, “clan” or “tribe” in Hindi. The framework of this whole system, however, depended on the line of work an individual was associated



with, not birth. Therefore the same system was originally called “Varna” System wherein “varna” translates to “kinds of people with respect to the kind of work they do for a living”. Bhagvad Gita states, and to quote, “All the different qualities of work of various castes in society namely the Brahmins, Kshatriyas, Vaishyas and Shudras are determined by their innate modes of their nature.” The Mahabharata too holds up the fact that there is no superior caste and that the beings are divided into castes according to their attributes or “gunas”.

## Analyzing the Modern Day Social Optics Involving Caste:

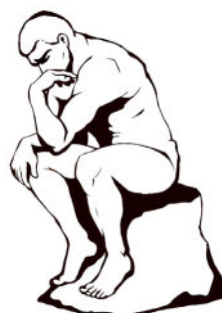
To break it down in one may say the division of castes based on people's abilities was quite similar to how Human Resource Management specialists assign workload and positions to employees in corporate houses today. If Harry works best when under another person's guidance, Harry will be made an Executive of the company; the same Harry, in the Vedic age, was classified as a "Shudra". If Niti is a quick thinker and a good decision maker who has the potential to lead, Niti would be made Manager in the company; the same Niti, back in the day, was called a "Brahmin". Does this in any way imply that Niti and Harry's heirs will have the same qualities as them or take up the same line of work as them? It doesn't. For centuries, Indians have been aggressively opposing inter caste relationships, especially martial. It was the people who separated village amenities like wells.

The way caste system has brought in boundaries in humanity is indeed shameful. The system, like all other things, had its own flaws. Caste is deeply entrenched, persists over generations and is reinforced by ever strengthening conservative ideas and practices causing the fault lines to widen beyond reconciliation.

### Case Study I: Article 15 (2019)

When the policemen themselves keep hushing up murder and gang rape of children as young as fifteen, it asks you a question. When the limbs of the law segregate citizens "people like us" and "people like them", it asks you a question. Article 15 asks you questions you already know but don't ask yourselves enough.

Three lower caste girls go missing in the hypothetical village of Lalgaoon. A couple of days later, two of them are murdered and brutally hanged in a tree. The third, still missing. When the girls' families are questioned, it breaks one's heart to see a father being accused of an injustice his own daughter had to face. The same victim's sister reveals how the young girl had to bear violence for asking for Rs. 3 more than what she was offered for doing construction work. Ayan Ranjan (played by Ayushmann Khurana) who is a man from the cities who is evidently at odds with these systems and mindsets, after having witnessed bits of Lalgaoon, exasperatedly tells his wife, "It's like the wild, wild West." The grappling presence of caste based discrimination in the village is felt throughout the movie. On the other hand there's immense pressure on Ayan Ranjan to close the case, from his colleagues



as well as commoners. There comes a time when the audience sees no hope from the system, yet political parties do not miss a chance to use the same injustice as a part of their promises. And how wrong could it possibly go when a young woman, from a lower caste again, says, "Aap logon ka transfer ho jata hai, humein maar diya jata hai." (Translation: "You get transferred, while we get killed")



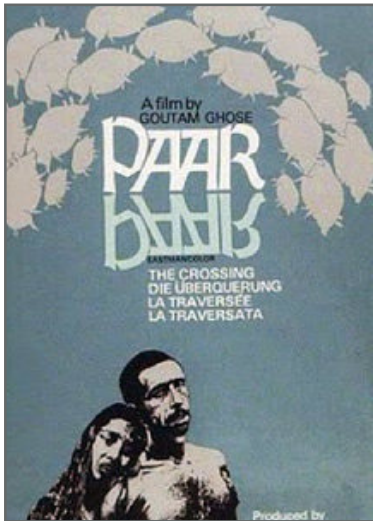
Image Source: <https://www.imdb.com/title/tt10324144/>

**Article 15 is a movie that sparks a conversation, asking questions that should be asked.**

### Case Study II: Paar (1984)

The movie is set in rural Bihar where a high caste landlord sends goons to massacre a village and kill a major progressive force of the same. Homes are burnt, poor residents are beaten up. Even the children aren't spared. The sad part is, to many it isn't just a movie, it is reality. It shows the curse bearing exploitation of the downtrodden, and the futilities of rebelling against the exploiters.

Naseeruddin Shah plays a middle aged helpless villager, who is forced to flee the village because of atrocities committed by the landlord. Since factories and mills are



### PAAR (1984)

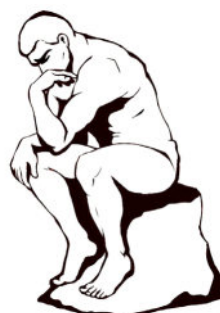
Image Source: [https://en.wikipedia.org/wiki/Paar\\_\(film\)](https://en.wikipedia.org/wiki/Paar_(film))

closing down, there are no jobs in Kolkata, none for the literate, and certainly not for the villagers. In that case, he is offered a small amount of money that buys a meal a day for a famished couple. Shabana Azmi plays the typical retro housewife, gulping down all the humiliation without a word. The lower caste couple is given several humiliating tags like 'freeloaders'. **Paar mirrors the harsh reality of the street life that most villagers experience when they're looking to make a life in the big city while seeking to escape from the impending brutal reality of being killed in their rural hometown due to the overwhelming superiority and clout of the dominant caste unleashing a reign of terror.**

### Legal Provisions to deal with the menace of the Caste System:

### THE UNTOUCHABILITY OFFENCES ACT 1955 – KEY HIGHLIGHTS

- Article 17 of the Indian Constitution abolishes the practice of untouchability.
- The Untouchability (Offences) Act, 1955 makes this practice a punishable offence. It also prescribes penalties for the enforcement of any disability that arises out of untouchability.
- This Act was passed in the Indian Parliament for the eradication of untouchability from the country.



- The Act imposed a 6-month-imprisonment or a fine of Rs.500 for any person convicted of enforcing the disabilities of untouchability on anyone else in case of his first offence.
- In the case of subsequent offences, the convicted person will be sentenced the jail term as well as the fine. There is provision for increasing the punishment also if considered necessary.
- The offences covered under the Act are ones like preventing a person from entering a temple/place of worship or any other public place; preventing a person from drawing water from sacred water bodies, wells, etc.; preventing a person from using a 'dharmashala', restaurant, shop, hotel, hospital, public conveyance, educational institution, and any place of public entertainment.
- It also covers the denial of the usage of roads, rivers, river banks, cremation grounds, wells, etc.
- Other offences included are enforcing professional, trade or occupational disabilities, preventing a person from benefiting out of a charity, refusing any person from carrying out an occupation, refusing to sell goods/services to a person, injuring, molesting, excommunicating, boycotting or annoying a person on the basis of untouchability.
- The Act was introduced in the Lok Sabha on 8th May 1955 and passed in both houses. It became effective from 1st June 1955.
- The Act was amended on September 2nd 1976 and renamed Protection of the Civil Rights Act. This Act had even stringent measures to curb untouchability. It made the wilful negligence of complaints related to untouchability by investigating officers as tantamount to abetment.

# THE SCHEDULED CASTE AND SCHEDULED TRIBES PREVENTION OF ATROCITIES ACT 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 No. 33 OF 1989 [11th September, 1989.] An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Fortieth Year of the Republic of India as Follows:

## Chapter I: PRELIMINARY

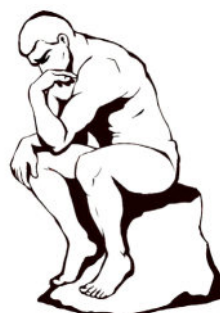
1. Short title, extent and commencement 1. This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. 2. It extends to the whole of India except the State of Jammu & Kashmir. 3. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. 2. Definitions 1. In this Act unless the context otherwise requires - a. "atrocities" means an offence punishable under section 3 b. "Code" means the Code of Criminal Procedure, 1973 (2 of 1974) c. "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of article 366 of the Constitution d. "Special Court" means a Court of Session specified as a Special Court in section 14 e. "Special Public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in section 15 f. words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code. 2. Any reference in this Act to any enactment or any provision thereof shall in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

## CHAPTER II: OFFENCES OF ATROCITIES

### 3. Punishment for offences of atrocities

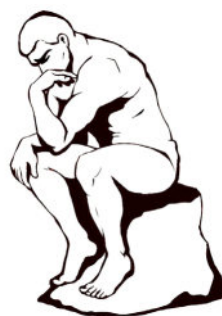
1. Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -  
i. forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance  
ii. acts with intent

to cause injury, insult or annoyance to any member of a Scheduled Caste, or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood; iii. forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity  
iv. wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred; v. wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water  
vi. compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government  
vii. forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law  
viii. institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe  
ix. gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe  
x. intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view  
xi. assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty  
xii. being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed  
xiii. corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or a Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used  
xiv. • denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to  
xv. forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence shall be punishable



with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

• Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe - i. gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death ii. gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine iii. commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine iv. commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine v. commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine vi. knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or vii. being a public servant,



commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence

4. Punishment for neglect of duties Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

5. Enhanced punishment for subsequent conviction Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

6. Application of certain provisions of the Indian Penal Code Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, Section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

7. Forfeiture of property of certain persons 1. Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government. 2. Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realisation of any fine imposed under this Chapter.

8. Presumption as to offences In a prosecution for an offence under this Chapter, if it is proved that - a. the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence b. a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regard-ing land or any other matter, it shall be presumed that the offence

was committed in furtherance of the common intention or in prosecution of the common object.

### 9. Conferment Powers

1. Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it consider it necessary or expedient so to do - a. for the prevention of and for coping with any offence under this Act, or b. for any case or class or group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court. 2. All officer of police and all other officers of Government shall assist the officer referred to in subsection (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder. 3. The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

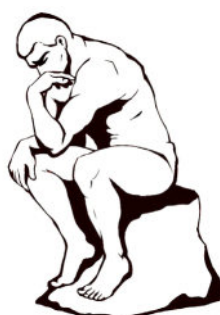
### CHAPTER III: EXTERNMENT

10. Removal of person likely to commit offence a. Where the Special Court is satisfied, upon a complaint, or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in 'Scheduled Areas' or 'tribal areas', as referred to in article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding two years, as may be specified in the order. b. The Special Court shall, along with the order under sub-section (1) communicate to the person directed under that sub-section the grounds on which such order has been made. c. The

Special Court may revoke or modify the order made under sub- section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

11. Procedure on failure of person to remove himself from area and enter thereon after removal 1. If a person to whom a direction has been issued under section 10 to remove himself from any area - a. fails to remove himself as directed; or b. having so removed himself enters such area within the period specified in the order, otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify. 2. The Special Court may, by order in writing, permit any person in respect of whom an order under section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.

3. The Special Court may at any time revoke any such permission. 4. Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the



.....  
**“Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe - i. gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine”**

unexpired portion specified under section 10 without a fresh permission. 5. If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

12. Taking measurements and photographs, etc. of persons against whom order under section 10 is made

1. Every person against whom an order has been made under section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer. 2. If any person referred to in sub-section (1), when required to allow his measurements or photographs to be taken resists or refuses to allow his taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof. 3. Resistance to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).

4. Where an order under section 10 is revoked, all measurements and photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

13. Penalty for non compliance of order under section 10 Any person contravening an order of the Special Court made under section 10 shall be punishable with imprisonment for a term which may extend to one year and with fine.

#### CHAPTER IV: SPECIAL COURTS

14. Special Court For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

15. Special Public Prosecutor For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

#### CHAPTER V: MISCELLANEOUS

16. Power of State Government to impose collective fine The provisions of section 10A of the Protection of Civil Rights Act, 1955 (22 of 1955) shall, so far as may be, apply for

the purposes of imposition and realization of collective fine and for all other matters connected therewith under this Act.

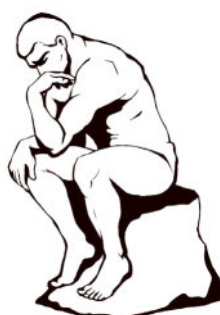
17. Preventive action to be taken by the law and order machinery 1. A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behaviour and maintenance of public order and tranquility and may take preventive action. 2. The provisions of Chapters VIII, X and XI of the Code shall, so far as may be, apply for the purposes of sub-section (1). 3. The State Government may, by notification in the Official Gazette, make one or more schemes specifying the manner in which the officers referred to in sub-section (1) shall take appropriate action specified in such scheme or schemes to prevent atrocities and to restore the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.

18. Section 438 of the code not to apply to persons committing an offence under the Act Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act

19. Section 360 of the Code or the Provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act The provisions of section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this act.

20. Act to override other laws Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

21. Duty of Government to ensure effective implementation of the Act 1. Subject to such rules as the Central Government may make in this behalf, the State Government





shall take such measures as may be necessary for the effective implementation of this Act. 2. In particular, and without prejudice to the generality of the foregoing provisions, such measures may include - i. the provision for adequate facilities, including legal aid to the persons subjected to atrocities to enable them to avail themselves of justice ii. the provision for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under this Act iii. the provision for the economic and social rehabilitation of the victims of the atrocities iv. the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act v. the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures vi. provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provision of this Act vii. the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members

3. The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under sub-section (1) 4. The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

22. Protection of action taken in good faith No suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

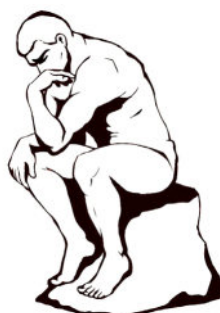
23. Power to make rules 1. The Central government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. 2. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however,

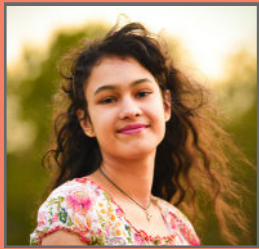
that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

One, who has noticed the difference in the year of release of two of the movies, may naturally question the persistence of this extremely elaborate system. How has it lasted for all these years? One possible reason could be lack of awareness among the lower classes that didn't spark off the hunger for equal rights until recently. Laws in place need robust implementation, but, it appears neither reform nor deterrence could make any positive as Caste continues to reinvent itself. To conclude, it can be said that the caste system in itself wasn't intended to affect the society the way it started doing. It was only a means to organize the society based on people's abilities, and strictly not birth. But human tendencies of gaining security and superiority derogated the entire thing and placed one layer above another for centuries.

### Webliography:

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2. <https://byjus.com/free-ias-prep/this-day-in-history-jun01/#:-:text=Untouchability%20Act&text=This%20Act%20was%20passed%20in,case%20of%20his%20first%20offence.>





# THE RETURN OF THE PIED PIPER ATTACK ON THE CAPITOL

*[ The storming of the Capitol by disgruntled elements is evaluated by Anushcka with the underlying ramifications including the most severe challenge to existing democratic institutions ]*

## The Capitol Hill

**I**t is the area in Washington DC, where the Congress is situated. This is where elected officials in the Senate and the House of Representatives sit when debating and voting on laws, making up the upper and lower chambers of Congress. The Hill contains several key sites such as the US Supreme Court and the Library of Congress. The hill is centred around the US Capitol building where the protestors broke in.

## The spell casting Trump harp

6th January, 2021: Adding fuel to the fire, Donald Trump addresses the bustling crowd attending his “Save America” , “stop the steal” rally organised to challenge the election result. His 70 minute address compliments his weeks of prompts to march to the Capitol. ‘We are going to the Capitol’ Trump says, which interestingly enough is not a ‘we’ as the President did not even join his fellow supporters for a short walk from the rally to the Congress. After losing the 59th quadrennial United States Presidential elections, 2020 to President-Elect Joe Biden, Trump has been ranting on about imagined wrongdoings and injustices done to him.



Consumed by narcissism, Trump is blind to the damage he has done, not only has he damaged the image of the republic by undermining faith in elections, but also risked inhibiting enthusiasm among Republican voters who feel that their vote is not insignificant anymore. The truth is out there, the voting is over, Americans have elected Biden. The people have decided, the states have certified their counts, and the courts have rejected Trump’s challenges. Continuing to claim that the election was rigged is a lie, Trump is yet to swallow his pride and accept that result.

The ‘encouraged’ crowd at the Capitol breached police barricades and stormed in the building to prevent the formalization of President elect Joe Biden’s election victory. Capitol Police officers were assaulted, parts of the prestigious building was vandalized, looted, occupied by the protestors, chemical agents were used, pipe bombs were reported at the Republican National Committee Building, just a block away from the Capitol. Another device was discovered near the Democratic National Committee headquarters soon after. Some rioters, for instance, were photographed carrying zip ties, a plastic version of handcuffs, and one man was arrested allegedly carrying a pistol on the Capitol grounds.

## Groups and Symbol

### *Who broke into the Capitol?*

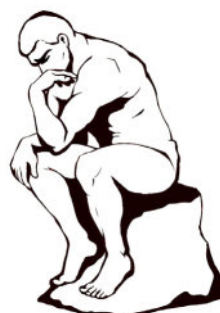
Images and security footages show some individuals associated with extremist, far-right, conspiracy fascinated groups storming the Capitol building alongside other Trump supporters. One of the most startling image was of a man wearing a fur hat with horns, with his face painted in the American flag colours, holding the flag itself. He has been identified as Jake Angeli, a well-known supporter of the conspiracy theory QAnon. A person wearing a shirt with the QAnon Slogan 'Trust the Plan' was seen talking to a policeman inside the Capitol building. Plenty of QAnon supporters were seen amid the chaos waving Q themed banners all across. At its heart, QAnon is a wide-ranging completely unfounded theory that says that President Trump is waging a secret war against elite Satan-worshipping paedophiles in government, business and the media.



**Image Source:** <https://www.nbcnews.com/think/opinion/trump-egged-rioters-capitol-he-needs-be-removed-office-now-ncna1253132>

The members of the far-right group Proud Boys, (identifiable by their orange hats) an anti-immigrant and all male group, was also spotted at the storming of the Capitol. One of the members, Nick Ochs tweeted a selfie inside the building saying "Hello from the Capitol lol". A Richard Barnett from Arkansas's image was captured showing him entering the office of senior Democrat politician Nancy Pelosi. On the other hand, many social media users, especially those associated with the QAnon and supporters of Trump, are claiming that the agitators were from the left-wing group Antifa, disguised as Trump Supporters.

Some rioters were seen holding a confederate flag, which represented US States that supported the continuation of slavery during the American Civil War and is considered by



many to be a symbol of racism. In July, 2020, it was announced that the flag could no longer be flown on American military properties because of a new policy to reject "divisive" symbols, despite constant defiance of the use of the flag from Trump himself. There were protestors holding a flag depicting a coiled rattlesnake on a yellow background, accompanied by the phrase "don't tread on me". This is known as the Gadsden flag, which is more recently a symbol of conservative Tea Party activists. It is also used by anti-government, white supremacist groups who embrace violence.

### **"Social Media's 9/11"**

The 9/11 attacks are a dark stain in American history, but as Stephen Colbert, the Late Show host said 'no Americans were cheering for the terrorists back then', 'no one was making excuses for the terrorists, no one was pretending that they weren't terrorists'. It is dangerous to compare the deadliest attack in American history to the mayhem at the US Capitol building. Yes, the magnitude of casualties in the 2001 attack differs by a huge margin, but one thing that links the two events is the ignorance to warnings of the violent extent of the rally. After 9/11, counter terrorism organisations are more cautious and over protective in the United States of America. The day before mobs attacked the Capitol, the FBI's field office in Norfolk, Virginia, sounded alarms that something bad might take place in Washington, D.C. Then why weren't their more police officers appointed for duty near the Capitol? Compared to the protestors, the police officers were a minute number. Chief Steven Sund of the Capitol Police had to make a desperate request for immediate assistance from the D.C. National Guard. It is clear that the police forces were taken aback by the violence displayed by the rioters as their barricades were broken and the protestors made it inside the Capitol Building. In the 9/11 attacks, around 25,000 people were injured and 3,000 people died, while in the Capitol riots, there were 5 people who died, apart from several injured. A police officer was beaten to death, a rioter was shot, and three others died during the rampage. A video of Rosanne Boyland, a victim was shown depicting her loss of consciousness in the crush of a pro-Trump mob as it surged against the police. Federal prosecutors have opened investigations into the deaths of two — the officer beaten by pro-Trump rioters, and the California woman shot inside the Capitol. Could all this have been avoided with precaution? Yes.

### **Who has the FBI arrested so far?**

According to the FBI, More than 200 case files



**DONALD TRUMP**

**Image Source:** <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>

have been opened and more than 100 arrests have been made in connection with the riots. Michael Sherwin, US Attorney for the District of Columbia said ‘officials are looking at significant felony cases tied to sedition and conspiracy’. Steven D’Antuono, the head of FBI’s Washington field Office told reporters that they have been

crimes. The key people charged from the riots are Robert Keith Packer, for “violent entry and disorderly conduct” on Capitol grounds, Jacob Angeli(Q Shaman) for “violent entry and disorderly conduct after appearing in multiple images inside the halls of Congress and the Senate Chamber”, Doug Jensen(QAnon) for five federal



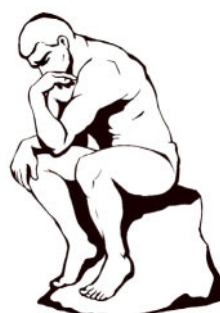
**Image Source:** <https://theweek.com/articles/958771/7-scathing-cartoons-about-trumps-capitol-riot>

receiving tips and information from the public. The Justice Department has received more than 140,000 videos and photos. In this manner social media has been a boon as well as a bane to this unfortunate event, it promoted the spread of Trump ideologies as well as help capture the perpetrators of such inhumane

charges, Nick Ochs(Proud Boys) for unlawful entry of restricted buildings or grounds and Richard Barnett for ‘unlawful entry, disorderly conduct on Capitol Grounds, as well as theft of public money, property or records.

### **The Impeachment**

What is incitement under the law? By dictionary, incitement is the act of encouraging someone to do or feel something unpleasant or violent. Incitement is a type of inchoate crime. An inchoate offense or an incomplete crime is a crime of preparing for or seeking to commit another crime. A person incurs inchoate criminal liability when he

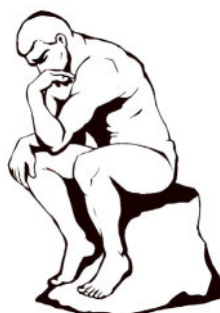


incites another person or other persons to commit a crime. The most salient characteristic of incitement, in comparison with other inchoate crimes(attempt, conspiracy) is the existence of a communication that is made with a view persuading the addressee(s) to commit offence. Incitement is not a crime under the First Amendment unless it meets a certain criteria. First of all, it has to be intended to cause violence with a likely cause to encourage an 'imminent violent action'. The prohibition on rebellion and insurrection arises in a brief passage found in 18 U.S.C. Section 2383. The law prohibits the incitement, assistance, and participation in a rebellion or insurrection against the authority of the United States and its laws. The punishment for this crime is a fine, a maximum sentence of 10 years in federal prison, and ineligibility for public office.

Only President to be impeached twice. What next? Trump for the second time has been charged with misconduct by the lower house of US Congress. The House of Representatives formally charged Trump with inciting an insurrection. Trump has been accused of encouraging violence with his fraud elections propaganda and egging on a mob to storm the Capitol on 6th January. Trump now faces trial in the Upper Chamber, the Senate. A two thirds majority in the Senate means a conviction and removal from office, but Trump is to leave the office on 20th January, 2021 anyway. The next stage of this process involves the speaker of the House, Nancy Pelosi to send the article of impeachment, after which the charge of incitement laid will be laid out and approved by lower chamber. The earliest the Senate could be green-lighted would be on 19th, just a day before Trump hands over power.

### **Does Trump fit the criteria?**

After analysing Trump's speech on the 6th, it makes a very close case when it comes to offense under incitement, as the result did emerge in an "imminent violent action" when the President told his supporters to 'walk down to the capital'. In the opinion of Professor Garrett Epps of the University of Baltimore, 'in the end, it's a jury question'. Trump clearly knew that there were agitators in the crowd who will resort to violent means, but did nothing about it, he only encouraged them further, he strongly hinted that it should happen(the storming of the Capitol). 'If you don't fight like hell, you're not going to have a country anymore', is the longest quote from Trump's speech that appears in the charge sheet. But Trump defenders quote the sentence 'peacefully and patriotically make your voices heard' as a counter against the incitement.



### **How many votes are required?**

In the lower chamber(controlled by the Democrats), a simple majority is required to pass the resolution. Democrats currently hold 222 seats to the Republicans' 211, with two vacant. Even without cross party support, Democrats will have no issue clearing the first hurdle to impeachment proceedings. Until January 2020, Republicans hold 52 seats to the Democrats' 48, giving the Republicans a narrow advantage. For Trump to be removed from office, it is necessary to gather support from two thirds of the Senate. Republican Senators Pat Toomey(Pennsylvania) and Lisa Murkowski(Alaska) have called on Trump to resign, giving Democrats a sense of hope. Even Mitch McConnell, who leads the Republican Party in the Upper Chamber says he has not made up his mind as to how he will vote.

### **Can Trump run for President again?**

If Trump is convicted by the Senate, Trump can be prevented for running for elections again which he has indicated to run for in 2024. The constitution provides the means for a vote on Trump holding future office if he is impeached, which cannot be ruled out. Unlike a vote to remove a sitting President, a simple majority is required in the Upper Chamber to prevent him from holding "any office of honour, trust or profit under the United States". This definitely could be appealing to Republicans hoping to run for President in 2024. If the impeachment is successful, along with losing eligibility to compete in the elections, Trump will lose benefits under the '1958 Former Presidents Act', which includes a pension, health insurance and a potential lifetime security detail at taxpayers' expense, something Trump has already been scrutinized a lot for before.

### **Can Trump Pardon himself?**

According to a source at CNN, Trump is to issue 100 pardons and commutations on 19th Jan, but the biggest question is can he grant a pardon to himself on the final day of his Presidency? If he did, it would not help him slip away from the mess he has created, it would exonerate him from all Federal Crimes he has committed under Presidency, but would not cover a conviction in the Senate. However, there is no precedent for a US President issuing such a pardon. Trump is already the talk of numerous criminal investigations including misleading tax authorities.

### **Conclusion**

The US Capitol Historical Society describes the US Capitol to be 'more than a building, it is an embodiment of American democracy



Image Source: <https://theweek.com/articles/958771/7-scathing-cartoons-about-trumps-capitol-riot>

and our way of life'. This incident is a disgrace to the American Democratic ideals, and is a display of the dangerous hold politics has over society. In the name of democracy, violent groups camouflage themselves among ordinary Republican supporters to reduce suspicion, but justice must prevail and questions must raise. How safe do the representatives of the House and Senate feel when the Capitol can so easily be breached? It is their duty to serve the people and the Judiciary's duty to uphold the law, but if their sacred reputation is challenged without any evidence, then democracy has truly failed. Blind faith is a dangerous tool.

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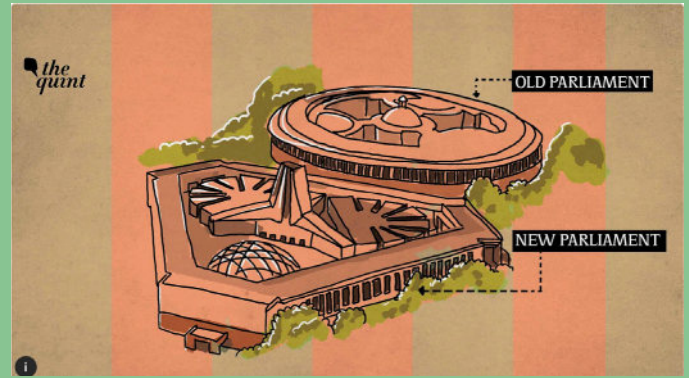


Image Source: <https://www.thequint.com/news/india/central-vista-redevelopment-seven-things-you-should-know-about-the-new-parliament>

# CENTRAL VISTA

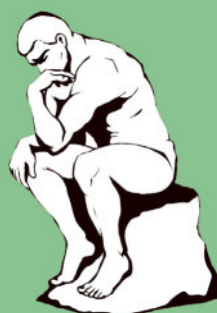
*[ The Central Vista Project is examined by Ojas whose construct supports the necessity of it in the context of a new and modernizing India]*

On the 5th of January, 2021, the Supreme Court of India held a consensus and allowed the 'Central Vista' project to go ahead. The project entails the complete refurbishment and improvement of the Central Vista public space and making it a truly world class center. It also aims to re-establish it as a true architectural icon, housing modern facilities for administration, strengthening cultural institutions and most prominently celebrating and commemorating the 75th year of Indian Independence. This massive project includes the construction of a triangular parliamentary building, a Common Central Secretariat and the complete transformation and betterment of the 3 kilometer long Vista or Rajpath.

catching buildings were designed by Herbert Baker and Edward Lutyens before the inauguration of the new capital in 1931. These buildings are vastly important to the Government and to our heritage.

An insider view into some of the finer details regarding this ambitious project is worth having a look. The area of the landmark new Parliamentary Building will be 64,000m; 17,000m bigger than the old Parliamentary building. It will be earthquake and fire resistant, and as such it will cost 971 crore Rupees; taking into account all of the improvements and hopefully the introduction of some new technology which will help the government govern better. The two main buildings

What is the 'Central Vista' in the first place. Also called the Lutyen zone, this area consists of some of the most important functional buildings for the Indian Government. This includes Rashtrapati Bhawan, Parliament House, North and South Block, India Gate, among others. These iconic and eye-



have a construction timeline stretching till 2024. Tata constructions ltd won the construction bid; and the whole Management Pvt Ltd. Some of the surrounding buildings will be demolished; including the Nirman Bhavan and Vigyan Bhavan buildings. The residences of the Prime Minister and the Vice President will be demolished and remade. The old Parliament Building will not be wiped out as it is has been acknowledged to be an important archaeological site.

However, one might question the need to revamp the whole Central Vista or Lutyen's Zone? The answers, or answers, are quite simple to explain. The Government has proclaimed that the old Central Vista zone has inadequate architectural capacity to support the current needs. Most of the old Central Vista buildings have surpassed their structural lives; and will surely start cracking and crumbling within the next few years. The layout of the old Central Vista placed the Government buildings in an inconvenient manner; which affected inter-departmental co-ordination and unnecessary congestion and pollution because of the officers travelling back and forth between the buildings. The whole area in general is plagued by incessant pollution; and the crumbling surfaces of some of the most important administrative buildings in the Central Vista, certainly doesn't give a good look of the Indian Government to the rest of the world.

Towards the end of the first week of 2021, the Supreme court pronounced the go-ahead for the project. Justices A. Khanwilkar, D. Maheshwari and S. Khanna made the decision. Justices A. Khanwilkar and D. Maheshwari ruled in favor, whilst S. Khanna went the opposite way. They produced an interesting ruling to say the least; the Justices who ruled in favor said in their statements that they felt constrained to make the decision due to the enthusiasm and the urges of the petitioners. It seemed to an outside observer that they were perhaps reluctant in their ruling. Justice S. Khanna, who opposed the ruling flat out said that the Government should not have come to them so early and so eagerly; instead saying that they should have sought permission from the Heritage Conservation Committee. However, no matter how much pestilence, reluctance or philosophical thought was put in the debate leading to the ruling, one thing is clear; that the Central Vista Project would go ahead.

The Supreme Court gave another ruling concerning this case; to construct new smog towers around the new Parliament

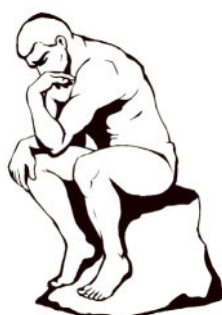
building of adequate capacity and the usage of smog guns throughout the many construction phases. Both appears to be well-informed and necessary directives. Again, what's more interesting is with how much anguish and irritation the decision was given. Earlier when the Supreme Court was approached with such a decision, they ordered Solicitor General Tushar Mehta to observe that no activities will happen in that are until a concrete decision by the Supreme Court is release concerning the Central Vista project. However, the decision was made, the green light given, and now it's up to the government to deliver; and to truly make Central Vista a world class Public space; fit for the world's largest democracy.

Now that the foundation about how the Central Vista project came to be and its finer details is laid down, one needs to examine how this plays out in the bigger picture; and the personal opinion of self on the whole ordeal and the project at large.

This is excellent. A truly magnificent way to mark the 75th year of Indian Independence and hopefully the first step in reducing the damage 2020 did to all of us; and kickstarting the rebirth and a new high-tech architectural and structural renaissance in India. The population of India has rapidly expanded over the years; going from 36 crores in 1951 to 195 crores now. India will soon have the world's largest population; and all of these people need more and more individual MP's and governance. The old Parliament had insufficient capacity for the huge amount of MP's that are going to be present in the future. It was a huge health and safety hazard as well; not having earthquake resistance and an ineffective fire protection system. The new building is top-notch security in comparison; and an excellent seating capacity to boot.

It is the farsightedness of Prime Minister Narendra Modi that the whole Central Vista project will serve as a strong pillar of cultural unity. Various countries such as the United States of America and the Commonwealth of Australia have both constructed new Parliaments after the British occupation of their territories ended. Therefore, constructing a much better, more energy-efficient and fire-earthquake resistant Parliamentary Building post-colonial-occupation would be a fitting tribute to the 75th year of Indian Independence indeed.

The majority of opinion that go against the Central Vista Project seem to mainly come from the legal and heritage point of view. The main statement being projected from the





legal side of things is this; 'If you are doing something to our national democratic space which involves serious amounts of land, the public should have been consulted.' Whilst a valid statement by all means, I think it's wrong. The public, which is comprised of such a variety of people that a concrete decision will be made too late, should not be consulted about everything. The Modi Government has consulted the highest court of law in India; and that should be enough permission.

Another complaint is about the land usage in the Central Vista project. While originally the split between Government and Public was supposed to be 60/40, the new plan seems to be allocating 95% percent of the space to the Government and 5% to the public. The writer feels that this should not be an issue. They have proclaimed that the new land split holds a better future for the public and semi-public spaces in the area; which includes the National Museum, National Centre of Arts, and National Archives. What's more important; some effort required to shift the items of value, or the proper and efficient functioning of the Parliament of India? The left sure has some bright ideas. Sure, the Prime Minister will get a bigger house, which might seem sketchy on paper due to the new land split; but let's not forget that we're talking about Narendra Modi. Whatever your opinions on his tenure may be, one cannot deny that he is by most means a humble man. He has not forgotten his origins, and the new land space allocated towards the Government will be put to good use, I'm sure. If not, well, it's up to the voters in the next election to decide the Government's punishment. Expanding upon the complaints being made about land usage, there's the concept of 'Living Heritage.' i.e if you shift all of the heritage items in the Central Vista Area somewhere else and make a paper mache New Delhi, you destroy it's 'Living Heritage.' It's hard not to laugh at this statement. Mummifying old public structures destroys the living heritage and therefore it is a 'bad thing'? No way in heaven, hell, or limbo. Do you seriously think that all these buildings will even have a trace in the next 20 years? It's better to do it now rather than later; constructing a new Parliamentary and improving Government administration can help heal India from 2020 and the coronavirus pandemic. Healing from the pandemic is imperative compared to destroying "Living Heritage." I'm not denying the importance of these buildings; I'm just saying it's a lot better to focus on the future than the past. If the Government fails to deliver on it's promise to make the Central Vista a world class public space, as I said before, India is the people's

country, and the voters can decide upon the appropriate punishment for the Government.

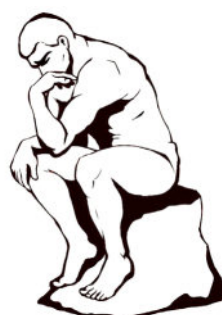
In conclusion, The Central Vista Project is by no means perfect; but undoubtedly has more advantages than disadvantages. Sure, the land split could use some work, but it's far from a gross error that deserves protests. The new Parliamentary Building will give the world a good impression of the world's largest democracy, rather than the old, yellowing and crumbling Parliament of the old. The historical and heritage value of the old cannot be denied but a new, more improved and more spacious Parliamentary building will provide more value than inhabiting an unsafe building because of its heritage and historical importance.

The Central Vista Project will hopefully be the lift-off of sorts for the total technological, architectural rebirth of India. The new Parliament Building's new earthquake and fire-proof design, along with the increased capacity, will be an imperative reaction to the rapidly increasing population of India. One cannot negate the need of a more spacious parliamentary Building.

The Central Vista Project does not only concern the Parliament Building, however. It also includes the whole refurbishment of the whole area. The construction of a new Common Central Secretariat and the complete rebuilding of the Main Vista or Rajpath will give a whole new look, feel and value to the whole area. The Government has promised to make the whole area a world class space in general; dedicating to an very important occasion; the 75th year of Indian Independence. I have a feeling that the Government will deliver their promise; and if not, the voters will punish them, like we always do. That's the great thing about India.

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# FOURTH MILITARY HISTORY SEMINAR

HOSTED BY WELHAM BOYS' SCHOOL

24<sup>TH</sup> AND 25<sup>TH</sup> NOVEMBER 2020

*[ The Military History seminar hosted by the Welham Boys' School is an one of a kind initiative in the realm of public schools. This year, for the first time, a delegation of eight Aviators- Shrabona Borthakur, Anuja Barooah, Asmita Kakati, Anoushka S. Rabha, Neha Swabnam, Naviya Chamariya, Parthiv Gargo and Karma T. Chamling – represented the Assam Valley School on the prestigious platform under the guidance of Mrs. Dayita B. Datta*



## DAY 1 – ANOUSHKA S RABHA

The opening ceremony was graced by the virtual presence of General Ved Prakash Malik, the 19th Chief of Army Staff, an extremely decorated individual who had spearheaded the Operation Vijay which had resulted in Pakistan's defeat in the Kargil War. Interestingly, he had also been a part of the Operation Cactus which had successfully quelled the attempted coup d'état in Maldives, in 1988. Military history surprisingly, isn't as meticulously documented as one would assume. More often than not, most of the surviving documentation is inaccessible to the public. The general masses rely

on the memoirs or other literary works of the men in service to get a glimpse into the relatively veiled aspects of national affairs. Therefore, to be able to gain the insider's perspective from the very man who had navigated the Indian Army in one of the most decisive battles fought by Independent India till date was a matter of pride for our delegation.

The seminar came at a time when the world was still reeling from the effects of the COVID-19 pandemic and our country had just witnessed multiple rounds of escalation of tensions with the our ambitious pseudo-Hegemonic neighbour(s).



The theme this year was THE DRAGON AT THE DOOR – obviously referring to our largest neighbour! So first two sessions of the seminar was centred around the Dragon's recent attempts at border disputes, not just with us but other nations in the Indo-Pacific region. The first session was moderated by Maj. General Jagatbir Singh, with the panel consisting of – Lt. General K. J. Singh, Lt. General P. J. S. Pannu and Lt. General Balbir Singh Sandhu. This round of riveting talks enriched the audience with how warfare is much more than a series of tragedies enjoined by logistics. The conversation ranged from the siege at Poonch to the importance of the army's supply chain networks in difficult terrain and ended with stern affirmation that our army is prepared for all possible scenarios.

The second session gave us a better look into just how one can Touch the Sky with Glory. The Air Forces' stance and perception of the recent developments was moderated by Air Marshal Anil Chopra, with Air Vice Marshal Bahadur Manmohan and Air Marshal Ramesh Rai, as panellists. We were shown an comparative analysis of the world's second and third largest air forces, with an in depth manoeuvre through our pride and joys – the Migs, the Apaches, the Rafales, the Jaguars, the Sukhois and the Tejas. This session was illustrated with maps showing the comparative location of the air forces of India and China facing each other across the Himalayas. The stimulating series of talks enabled us to get an idea of how warfare functions. It also promoted a sense of pride for our armed forces and encouraged greater engagement of the youth's interest in military history, because that is what has paved the way for our today.

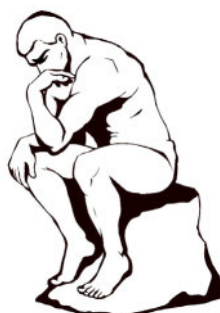


## DAY 2 – NAVIYA CHAMARIYA

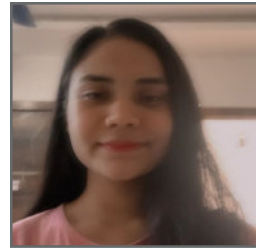
The first day of the military history seminar had been an extremely fruitful one; only to make us look forward to the second day with much more enthusiasm! The first two sessions of the day were moderated by Major General Jagatbir Singh who ensured that the renowned panelists and officers shared their personal experiences and nuances from wars, battle and diplomatic ties we had only briefly read about.

The first session of the day dealt with the much discussed disputes of J&K in 1947-48, with the panelists Colonel Ajay K Raina, Brigadier Rajendra Singh and Mr. Pankaj Singh. They shed light on various new perspectives with regard to those disputes and talked about Brigadier Pritam Singh, the man who is credited for saving Poonch from the marauding Pakistan-sponsored tribal lashkars. In the second session of the day, Commodore Srikant Kesnur and Ms. Kajari Kamal talked about the post-US election scenario with the emerging equation in the Indian and Pacific Oceans. The talk focussed on the Quad – the informal grouping of USA, Japan, China and Australia which is performing exercises in the Indian Ocean and to preserve it as an open zone, free from attempts to allow any one power to dominate. The final session of the seminar was moderated by the well known historian and film-maker Mr. Shiv Kunal Verma with the former Naval chief, Admiral Sunil Lamba as the chief guest who also enlightened us with his personal experiences at sea and otherwise.

The entire concept of a Military History Seminar is one not often heard about, and while one may think it is the same as reading a history book or watching a documentary, it most certainly is not. The most enticing feature of this initiative is that we do not just believe in hear-say, but listen to people who have been there, and speak from experience. Although virtual, this truly has been an experience of a kind.



As this was something very different from what students are used to, given below are some student feedback about the seminar



**NEHA SWABNAM**

The whole event was very informative, I got to learn a lot of new things. It was indeed a great opportunity and It did encourage me on paths related to military and international affairs.



**ANUJA BAROOAH**

The military history seminar was a wonderful experience. I really got to learn a lot about the Indian Navy and Indian Army and also about their current preparations. Getting the chance to hear from such prominent people like Mr. Shiv Kunal Verma, the Lt. Generals, the Air Marshals and also the former Naval Chief was truly my privilege.



**SHRABONA BORTHAKUR**

It was very enriching. No only was it informative, getting to know the stories from the inside, and learning about our country's military history was surely a very good first time experience



**ASMITA KAKATI**

The military history seminar was a very enriching experience for me. It was indeed fruitful to hear from those who have actually lived through the miserable conditions on our borders. The seminar included great sessions which were very informative and gave us the real picture of what we couldn't have imagined otherwise. It was a very interesting seminar. I had a great time attending it and enjoyed it thoroughly.



**PARTHIV GARGO**

It was an incredibly humbling experience for all of us to listen to the men who have served our nation in the armed forces and to get to know about the tough situations and challenges they faced. Moreover we got a practical perspective of the events that we've been studying in our course from the people who lived it. It was a great learning experience and I am glad to have been a part of this seminar.

