



**ECONOMIC POLICY**



**SOCIAL POLICY**



**REGIONAL INTEGRATION**



**GOVERNANCE**

## **MONTHLY NEWSLETTER**

### **NOVEMBER EDITION**

#### **NEWSLETTER FOCUS:**

- THE EXTENT OF RIGHT TO PROTEST AND THE GAME OF POLITICS
- NCRB'S POLICY OF NATIONAL AUTOMATED FACIAL RECOGNITION SYSTEM AND THE 21ST CENTURY THEORY OF 'CONTEXTUAL INTEGRITY'
- THE BIDEN-HARRIS WIN AND THE FUTURE OF INDO-US RELATIONS

#### **MAJOR EVENT:**

- FARMER'S PROTEST ON NEW FARM REFORMS OF 2020
- PROPOSAL FOR AUTOMATED FACIAL RECOGNITION SYSTEM
- US PRESIDENTIAL ELECTION

# THE EXTENT OF RIGHT TO PROTEST AND THE GAME OF POLITICS



The whole India is witnessing protest by the farmer union of Punjab and Haryana. For the past few days, tens of thousands of farmers have been camped out on the borders of Delhi protesting the Farm reforms 2020. The farmers fear that after the implementation of new laws, MSP will be removed, Corporates will be controlling the farmers, farmers will be cheated etc. and hence they demand that the acts should be repealed.

The government with the aim to globalize Indian agriculture market, provide farmers with multiple marketing channels and provide a legal framework for farmers to enter into pre-arranged contracts among other things, passed 3 agricultural bills. Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, and the Essential Commodities (Amendment) Act, will help small and marginalised farmers to get better price for the produce or better technology to increase the productivity. The act eliminates the role of middleman or agents and allows the farmers to sell their produce outside APMC 'mandis' to whoever they want. Farmers will get better prices through competition and cost-cutting on transportation and it will also transfer the risk of market unpredictability from the farmers to the sponsors.

The whole situation caught attention not only nationally but internationally also. Few days back, the UN spokesperson had shown support for the farmers stating, "People have a right to demonstrate peacefully and authorities should let them do so."

Recently, a plea has been made to the supreme court seeking removal of farmers from Delhi borders. It is necessary to examine the Shaheen Bagh Judgment and the Amit Sahni vs. Commissioner of Police (protests against the Citizenship Amendment Act) based on that to further evaluate how far the Right to Protest extends.

The Hon'ble Supreme Court in both the cases held that right to peaceful protest cannot extend to occupying public spaces indefinitely. Article 20 of the Universal Declaration of human rights and Article 21 and 22 of the International convention of Civil and Political Rights guarantee right to freedom of assembly and use of public places for protests, However, this right is not absolute and are subject to restrictions based on "protection of the rights and freedom of others." These restrictions, however, should be lawful, necessary and proportionate to the aim. The Indian constitution too recognises restrictions to the freedom of expression and assembly under Article 19(2) and (3), respectively. In the case of farmer's protests, the protestors had been allotted the Nirankari ground in Burari to hold their protests peacefully. However, they chose to camp at the borders and block the roads. The protestors have blocked key roads in furtherance of a nationwide shutdown. In states like west bengal, railway tracks have been blocked. In addition, the protestors have in the process caused destruction of public property. In this regard, Article 51A(i) of the constitution, places a duty on every citizen "to safeguard public property and to abjure violence." Further, The Prevention of Damage to Public Property Act, 1984 punishes anyone "who commits mischief by doing any act in respect of any public property" with a jail term of up to five years and a fine or both. The SC in *Re: Destruction of Public & Private Properties v State of AP and Ors* (2009) has laid down certain guidelines. Firstly, The judgement has reversed the burden of proof against protestors. Secondly, the rioters are made strictly liable for the damage.

The Farmer's concerns are relevant but it is equally true that Old monopoly should be broken to welcome new competitiveness and if we want to go global we will have to work towards it. The whole situation has been turned into a political opportunity by the opposition parties rather than the law being an opportunity for the country. Those opposition parties who once wanted to implement similar laws have emerged as the supporters and are creating more chaos. Social media is used as a tool but not to talk on the demands of the farmers but on their fears to create misunderstanding and to spread misinformation .

# NCRB'S POLICY OF NATIONAL AUTOMATED FACIAL RECOGNITION SYSTEM AND THE 21ST CENTURY THEORY OF 'CONTEXTUAL INTEGRITY'



In the 21<sup>st</sup> Century, technology has evolved by leaps and bounds, and has impacted almost all walks of our lives. With the colossal growth, we have come to the realisation that almost every adversity in our life can be resolved by technological innovation. However, the increasing use of Facial Recognition Technology (“FRT”) by law enforcement agencies across the world for security and surveillance purposes is a matter of grave importance, and relevant for extensive discussion in our present-day scenario, where “technological solutionism” is the norm of the day.

In the Indian context, the National Crime Records Bureau (NCRB) has articulated its intention of creating a National Automated Facial Recognition System (“AFRS”), which would be used for identification of criminals, locating missing children, and several other purposes. The database would be created by gathering data from a wide range of databases across the country, including the Crime and Criminal Tracking Network & Systems (CCTNS), as well as the National Automated Fingerprint Identification System (NAFIS), containing personal data of the country’s citizens. Further, the NCRB has specifically asked

companies bidding for the AFRS to showcase that their facial recognition system can recognise “mask-wearing faces”.

The fundamental characteristic of biometrics and facial data is that they are immutable and unique to each of us. The use of integrated FRT systems in the form of AFRS has the potential to create a reasonable perception of surveillance, or engage in real-time tracking of citizens, which is quite dangerous and threatens privacy of several individuals.

Helen Nissenbaum is credited with the development of the notion of “contextual integrity”, a theory of privacy which is gaining a lot of attention with the increasing deployment of innovative technology in public places. According to Nissenbaum’s theory of contextual integrity, it is imperative that we are aware of the context, i.e., who is gathering information, analysing it, and disseminating it to other persons, the nature of information in question, as well as the larger social and institutional circumstances. While evaluating such aspects, it is crucial to assess whether collection of the information and subsequent dissemination interferes with the liberties of the data subjects or leads to an inequitable balance between specific groups, particularly, disparity between the citizen and the State. Contexts are constituted by norms, and govern aspects of behaviour, expectations and roles. The norm of appropriateness, which indicates the specific nature of information about persons, that can be revealed in a particular context, is a key aspect of contextual integrity. Today, it cannot be said that no norm is in operation when an individual is present in a public place. American philosopher James Rachels has propounded the view that an individual has the right not to respond to a question related to his personal data even in the most public of places. Courts across the world have affirmed the view that reasonable expectation of privacy of an individual is not undermined solely on account of a possibility of visual identification of an individual in a public location.

In the Indian context, Justice Chandrachud, as well as Justice Sikri applied Nissenbaum’s theory of contextual integrity in the Puttaswamy I and the Puttaswamy II judgements. Both the opinions place strong reliance on the factors in determining a reasonable expectation of privacy in a specific context. Moreover, as a result of data aggregation by virtue of the integration of personal data of individuals, movements of innocent individuals in public places can be subjected to extreme surveillance by law enforcement authorities in the name of maintaining public order, which thereby affects the right of privacy, and results in the development of a police State.

Thus, the AFRS-enabled criminal justice system has the possibility of the country assuming the characteristic of a police State, as predicted by George Orwell in his novel “Nineteen Eighty-Four”, wherein he had written that one vision of the future would require citizens to evade government surveillance by staying secretly in a blackened room with arms around each other as otherwise cameras and microphones would capture and record their faces and voices, which is in serious inconsistency with the nature of a Welfare State, envisaged by the Constitution-makers.



# THE BIDEN-HARRIS WIN AND THE FUTURE OF INDO-US RELATIONS



The Democratic Party has won the 2020 US elections bringing in Joe Biden as the President and Kamala Harris as the Vice President. While Harris' connection to India has gained much traction and renewed hopes for better than ever Indo-US ties, there is a need to understand the nature of US foreign policy conduct vis-a-vis India in the upcoming four years more pragmatically. American politician and diplomat Henry Kissinger said, "America has no permanent friends or enemies, only interests." It is this real politics that governs the actions of states in their foreign policy conduct. Hence, it would be premature to assume that the Biden-Harris administration would lead to a paradigm shift and complete overhaul of the Trump administration's foreign policy. However, the Democrats in their 2020 Democratic Platform stated that they would place "values" at the center of their foreign policy and it is here that a marked shift from Trump's conduct is to be expected.

Some foreign policy experts have argued that Trump's leadership and the popular mandate it received bolstered the rise of right-wing populist leaders like Bolsonaro in Brazil, Duterte in Philippines, Salvini in Italy, Orban in Hungary and others. Further, America's step back from its position as the world's beacon of democracy and liberalism under Trump's administration further allowed such leaders to pursue their illiberal policies without any condemnation.

The BJP government within the first year of their second term, introduced two major constitutional changes- the abrogation of Article 370 which pertains to the special status

granted to Kashmir and the passing of the Citizenship Amendment Act along with the implementation of the National Register of Citizens in Assam. These changes were met with wide-spread opposition. The Trump administration in line with their policy of non-intervention in internal matters of other countries did not take a stand against these policies. The Democratic Party in their 2020 Democratic Platform stated that “rather than defend democracy and human rights, he’s (Trump) fawned over autocrats, sent love letters to despots, sided with dictators over peaceful protestors”. Joe Biden has been disappointed by the measures that the government of India has taken with the implementation and aftermath of the National Register of Citizens in Assam and the passage of the Citizenship Amendment Act into law. Kamala Harris stated that “part of the values of who we are as a nation is we speak about human rights abuses and when appropriate we intervene”.

During the House Foreign Affairs Committee hearing in 2019, Democrat representatives called out Trump for taking America’s foreign policy away from its focus on human rights and democratic principles. The most vocal voices in the Democratic Party came from its progressive faction or the ‘New Left’. Hence, a future Biden administration is more likely to demand accountability from the Indian government.

Further, foreign policy analysts believe that the Biden administration would bring stability on issues such as immigration and the economy. The Democratic Party manifesto stated that they opposed Trump’s “illegal, chaotic and reckless changes to the legal immigration system” and committed to family-based immigration, H1-B and other visa programs that are very crucial to Indians. On the economic front, the Democrats affirmed their intention to better the engagement with the Association of South Asian Nations and highlighted the importance of the USA's relationship with India as a “growing Asia-Pacific power”. While great diplomatic wins for India on economic issues like removal of India from GSP and Trump’s condemnation of the benefits India gets at WTO because of its ‘developing nation’ tag are unlikely, a new leadership committed to their role in international financial institutions and economic stability create grounds for renewed dialogue and negotiations.

One of the most defining global issues of this century where Democrats will take a completely different policy position is climate change. Democrats have vowed to rejoin the Paris Agreement and commit to climate-related foreign assistance. This is expected to result in increased demands by global leaders on countries like India and China to ramp up their global commitments and compliance. However, this also creates room for India to engage with the USA on getting assistance and sharing of technology on climate change solutions.



The corona virus pandemic has changed the liberal global world order as we know it. It has disrupted global supply chains and led to protectionist policies and vaccine nationalism. Within this context, the future of Indo-US relations is going to be decided by the politics of corona virus, US-China trade war and climate change among other defining issues.

# CENTER FOR POLICY RESEARCH AND GOVERNANCE

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The Centre of Policy Research and Governance (CPRG), India strongly believes that in the 21st century an India deprived of gainful opportunities, necessary for the flourishing of a young and emergent India, will prove to be an impediment in the development of human capital and preservation of global security. CPRG thus works towards providing gainful opportunities in an effort to promote the involvement of young people in policy making and politics.



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