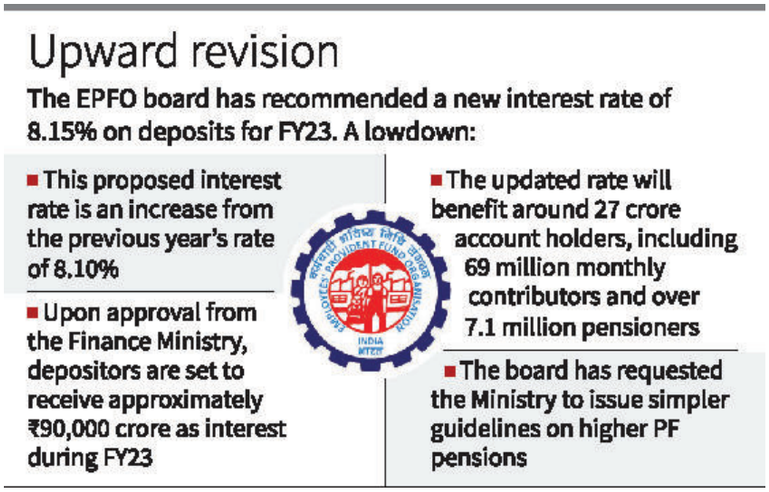
EPFO SET TO MARGINALLY HIKE INTEREST ON DEPOSITS TO 8.15%



After Finance Ministry's approval, the interest will be credited into subscribers' accounts; Central Board of Trustees asks EPFO to simplify the process of submitting joint options for higher pension

The Central Board of Trustees (CBT) of the Employees' Provident Fund Organisation (EPFO) has recommended an increase of 0.05% in the interest on Provident Fund deposits.

The new rate, applicable for 2022-23, will be 8.15%. Union Labour Minister Bhupender Yadav announced the decision after a two-day meeting of the CBT ended here on Tuesday.

In 2020-21, the interest rate was 8.5%. The CBT cut it to 8.1% (for 2021-22) in March 2022 drawing widespread criticism. Trade unions had criticised the Centre for reducing the interest rate every year.

Tuesday's meeting also discussed the delay in implementing the Supreme Court's verdict on higher PF pension. The Minister said the Centre's effort was to implement the order.

Members urged the EPFO to make the process of filing options simpler. They said that as most of the applicants were senior citizens, they should not be asked to run around by making it a cumbersome process. "Joint declaration, which has been sought, is tough to fulfil. Companies may not be maintaining the records beyond five to seven years. Retirees may have migrated to their native places. It should be made an easy process," a member told The Hindu after the meeting.

The EPFO is learnt to have agreed to issue a detailed clarification in layman's language with a list of frequently asked questions and answers.

An official release said the interest rate would be notified in the Government Gazette after the approval of the Ministry of Finance, following which the EPFO would credit the rate of interest into its subscribers' accounts. "The recommended rate of interest of 8.15% safeguards the surplus fund as well as guarantees increased income to members. In fact, the rate of interest at 8.15% and the surplus of ₹663.91 crore is higher than last year," the release added.

The Union Labour Ministry added in the release that the decision involves the distribution of more than ₹90,000 crore in the members' accounts.

The total principal amount with the EPFO is ₹11 lakh crore. In the last financial year, the total amount of interest was ₹77,424.84 crore for a principal of about ₹9.56 lakh crore. "The total income recommended for being distributed is the highest till date. The growth in income and the principal is respectively more than 16% and 15% as compared to last financial year 2021-22," the Ministry said.

The Centre has been maintaining that the EPFO's interest rate is higher than other comparable investment avenues available for subscribers.

The meeting also decided to map a five-year plan on capital expenditure so that by the end of five years, most of the EPFO offices get their own buildings. The budget for this is ₹2,000 crore.

Another issue that came up in the meeting was related to the EPFO's investment in exchange-traded funds (ETFs). The EPFO is allowed to invest 15% of its deposits in ETFs. Members pointed out that only about 10% of the deposits are now invested in ETF despite securing interest of about 10% and asked the pension fund manager why it has not invested up to the limit of 15% in ETFs.

The issue of EPFO's investments in Adani Group stocks was also raised at the CBT meeting. The officials told the members that the decision to invest in stocks is taken based on the top 50 shares of the National Stock Exchange.

THE QUOTA KERFUFFLE IN KARNATAKA

The story so far:

At the Cabinet meeting in Karnataka on Friday, the BJP government did away with the nearly three-decade-old 4% reservation for Muslims in the Other Backward Classes (OBC) category and distributed it equally among the Veerashaiva-Lingayats and Vokkaligas, two dominant land-owning communities in the State, at 2% each. Quick on its heels, the government also accorded internal reservation for 101 Scheduled Castes (SC). Both these decisions have come under intense political debate.

How has OBC and SC reservation changed?

The Cabinet decided to exclude Muslims from the OBC category and scrapped the 4% reservation given to them under Category 2B.

This has been divided equally among Vokkaligas and Veerashaiva-Lingayats for whom new categories of 2C and 2D have been created respectively. Following the change, the reservation quantum for Vokkaligas and others in the group went up from 4% to 6% and for Veerashaiva-Lingayats and others in the group, from 5% to 7%.

Earlier, the two communities were under 3A and 3B respectively, which stand scrapped.

The Cabinet also recommended internal reservation among the 101 SCs, a long pending demand of the SC (left) faction to the Union Government. Of the 17% reservation given to SCs in Karnataka, it has sliced up 6% to SC (left), 5.5% to SC (right), 4.5 % to SC (touchable) and 1% to SC (others).

While the basis for internal reservation was the recommendation of the A. J. Sadashiva Commission report of 2012 when reservation to SCs was pegged at 15%, the Government has adjusted the share, based on a

Redistributing: Banjara community members protest against the State's decision to give internal reservation for SCs in Shivamogga on March 27. PTI

Why has the BJP government in Karnataka removed the three-decade old 4% reservation for Muslims in the OBC category? Which are the communities that have gained from this move? How exactly has the reservation matrix within the State changed?

Cabinet sub-committee report, as per the new reservation quota that has been hiked to 17%.

How are Muslims losing out?

The BJP, which does not count Muslims among its voter base, has scrapped the reservation for Muslims, arguing that backward classes reservation is not based on religion.

Since 1995, the community has been given 4% reservation under Category 2B on grounds of being socially and educationally backward. Since the community has now lost its social and educational backwardness reservation status, it can claim reservation under the 10% quota for Economically Weaker Sections. This change has to be approved by the Centre.

However, Christians, Jains, Sikhs, Buddhists and converted Christians continue to remain in the backward classes category.

Also, nomadic Muslims in Category 1 continue to remain there.

Why was such a decision made?

The BJP, which draws strength from the numerically-strong Panchamasalis, a sub-sect among Veerashaiva-Lingayats, was under pressure as the community led by Kudalasangama Seer Sri Jayamruthyunjaya Swami has been agitating for two years seeking 2A status in the OBC list for the community. As far as Vokkaligas are concerned, the decision came much before they mounted any serious pressure on the BJP who is struggling to break into the Old Mysore region, which is the Vokkaliga heartland.

What is the likely political fallout?

While the BJP leaders argue that the OBC reservation quota cannot be extended based on religion, experts argue that Muslims were included based on the recommendations by the L.G. Havanur and Chinnappa Reddy Commissions constituted earlier. The Sachar Committee report also recommends the same. Legally, it is pointed out that any addition or deletion of a community from the reservation matrix should be based on an empirical study by the Karnataka Backward Classes Commission. No study was undertaken to exclude Muslims nor was the commission's final report submitted to argue for enhancement of reservation for Vokkaligas and Veerashaiava-Lingayats. In fact, the Commission has not even started work on the Vokkaliga demand.

However, the splitting of the Muslim reservation equally among Vokkaligas and Veerashaiva-Lingayats does not meet the demands of the two communities. While Vokkaligas had demanded 12% reservation based on population, the Panchamsalis had demanded 2A status that has a 15% quota. Now Panchamsalis will have to continue their fight for their share with other relatively well off and educated Veerashaiva-Lingayat sub-sects in the new category. Political pundits say it is too early to judge how these decisions will pan out in the electoral arena.

NAVY WILL MAKE YOU A BETTER PERSON, ADMIRAL TELLS FIRST BATCH OF AGNIVEERS

In the first passing-out parade of Agniveers, 2,585 men and women graduated from the portals of Indian Naval Ship (INS) Chilka, situated at Khurda, under the aegis of the Southern Naval Command on Tuesday.

The parade was the first such to take place after sunset.

Also, for the first time, the Navy gave the "General Bipin Rawat Rolling Trophy" for a woman Agniveer trainee standing first in overall order of merit.

Terming the event 'historic', Admiral R. Hari Kumar, Chief of the Naval Staff, who was also the reviewer of the parade, said that those graduating from INS Chilka on Tuesday are making history.

"It's a historic event and all of us are witness to the history in the making. It is also the first time that a passing-out parade is happening at sunset, a welcome departure from the usual morning parades," Admiral Kumar said.

Creating history

Admiral Kumar maintained that the parade held on Tuesday would not just be creating history of passing first batch of Agniveer but was also an event that marked the strength of women in the forces.

Praising the contribution of the first Chief of Army Staff, the late General Bipin Rawat, in materialising the Agniveer scheme, Admiral Kumar thanked the daughters of Gen. Rawat for agreeing to give away the honour of the rolling trophy to Agniveer Kushi. The chief guest also awarded Agniveer Amalakanti Jayaram (senior secondary recruit) and Agniveer Ajith P. (matric recruit) with the Chief of the Naval Staff Rolling Trophy and the gold medal for best Agniveer.

"As you cross the significant milestone today, let me share what you can expect from the service and what the service expects from you. Indian Navy will not just make you a skilled sailor but will also motivate you to become a capable individual. Navy will also ensure that your social, emotional and psychological skills are enhanced," Admiral Kumar added.

He added that the skill and training of the Navy would keep motivating the Agniveers to live a life of an ideal citizen, who is dedicated to the nation, throughout. The training will make the Agniveer ready for any situation and circumstance.

Proud moment: Admiral R. Hari Kumar with the first batch of Agniveers at INS Chilka, Odisha on Tuesday. ANI

As part of their transformation to sea warriors, the Agniveers underwent 16 weeks of rigorous training at INS Chilka, the premier sailors' training establishment of the Indian Navy.

On June 14, 2022, Defence Minister Rajnath Singh had announced the Agnipath scheme, as approved by the Union Cabinet, for recruitment of youth in the armed forces for four years. The process aimed to take in about 46,000 young men and women in the defence forces in next one year.

UPI PAYMENTS OF OVER ₹2,000 MAY ATTRACT UP TO 1.1% FEE

The National Payments Corporation of India (NPCI) has notified that an interchange fee of up to 1.1% will be applicable on merchant UPI (Unified Payments Interface) transactions done using prepaid payment instruments (PPIs) — wallets or cards — with effect from April 1.

The charge will be levied on UPI payments of over ₹2,000 made to merchants. However, on certain merchant categories, a lower interchange fee starting from 0.5% might be levied.

Interchange will not be applicable on P2P (peer-to-peer) and P2PM (peer-to-peer-merchant) between bank accounts and PPI wallets. However, PPI issuers will need to pay 15 bps as "wallet loading service charge" to the remitter bank for loading over ₹2,000 in the wallet.

10,727 TONNES OF WHEAT PROCURED; BAN ON EXPORTS CONTINUES

As the procurement of wheat for this rabi season has started, the Food Corporation of India's (FCI) Chairman and Managing Director, Ashok K. Meena, said the Centre will continue the ban on wheat export as long as the country does not feel comfortable in domestic supplies. Mr. Meena said the untimely rain have not impacted the standing crops or harvest as of now.

He said 10,727 tonnes of wheat has been procured up to Monday. No procurement was made in the corresponding period last year.

Mr. Meena said the FCI is estimated to procure 341.5 lakh tonnes of wheat this season as against 187.92 lakh tonnes procured during the last rabi season.

The Centre had finalised procurement estimates based on the information furnished by the States. The estimated production of wheat, according to the Agriculture Ministry, is around 1,121 lakh tonnes in this rabi season.

'CHINA RAMPING UP BAILOUT PACKAGES TO PAK., SRI LANKA AND OTHER BRI COUNTRIES'

Xi Jinping

China has handed out $240 billion worth of bailout loans to 22 developing countries at risk of default over the past two decades, with the trend accelerating in recent years, a report said on Tuesday.

Almost all the funds went to Belt and Road Initiative (BRI) countries such as Sri Lanka, Pakistan and Turkey — mostly low- and middle-income nations that have received Chinese loans for infrastructure development, according to the study.

The 40-page report by the U.S.-based research lab AidData, the World Bank, the Harvard Kennedy School and the Kiel Institute for the World Economy showed bailout loans had accelerated between 2016 and 2021, with Beijing doling out 80% of its rescue lending in that period.

Around the world, BRI nations have come under strain as soaring inflation and interest rates, compounded by the lingering impact of the Covid-19 pandemic, have hurt their ability to repay debts.

China says more than 150 countries have signed up to the BRI, a trillion-dollar global infrastructure push unveiled by President Xi Jinping a decade ago.

Beijing says the initiative aims to deepen friendly trade relations with other nations. But critics have long accused China of luring lower-income countries into debt traps.

"China has developed a system of 'Bailouts on the Belt and Road' that helps recipient countries to avoid default, and continue servicing their BRI debts, at least in the short run," the report said.

In comparison to the International Monetary Fund and the vast liquidity support extended by the U.S. Federal Reserve, China's bailouts remain small but are growing quickly, according to the report.

INDIA URGES G20 MEET TO FIND WAYS TO REDUCE WIDENING TRADE FINANCE GAP

Barthwal cites Asian Development Bank estimates showing the trade financing shortfall has risen to $2 trillion; Commerce Secretary emphasises need for cooperation among member countries to tackle the key issue, bats for faster digitalisation

The first Trade and Investment Working Group (TIWG) meeting under India's G20 Presidency started in Mumbai on Tuesday with Commerce Secretary Sunil Barthwal emphasising the need for trade finance cooperation among members to help reduce the widening trade finance gap.

"Trade finance gap is widening." Mr. Barthwal said, speaking at the International Conference on 'Trade Finance, organised by the Export Credit Guarantee Corporation of India (ECGC) and India's EXIM Bank. "As estimated by ADB, the gap which was $1.5 trillion in 2018 has now increased to $2 trillion," he added.

Observing that it was the right time to discuss the issues facing trade finance, the Commerce Secretary underscored the importance of finding the right solutions.

Panelists discussed the role banks, financial institutions, development finance institutions, and export credit agencies could play to identify gaps and address challenges in trade finance amid the uncertain global trade landscape.

The need to accelerate digitalisation and the adoption of fintech solutions for improving access to finance, was also stressed.

"Digitalisation of international trade is possibly an effective solution towards achieving cost reduction in trade and trade finance," the Commerce Ministry said in a statement. "The challenges to be addressed in digitalising trade were identified as international cooperation in harmonising definitions, standards and data sharing across the borders digitally," it added.

Panelists recommended that all nations should endeavour to adopt enabling legislation in the next few years to achieve paperless international trade.

INDIA UNDER FIRE AT WTO FOR AVOIDING QUESTIONS ON MSP

India has come under fire at the World Trade Organisation (WTO) for avoiding questions raised by members on its minimum support price (MSP) programmes for food grains, particularly rice, where subsidies have breached prescribed limits. Some countries have alleged that India did not give sufficient replies to their concerns.

Members such as the U.S., Australia, Canada, the EU, and Thailand, said at a WTO agriculture committee meeting on Monday that India must reply to questions asked on its public stockholding (PSH) programmes at the committee, according to sources. "India, however, stuck to its guns and insisted that it provided the best possible information and clarifications at the consultations held with interested members based on available information," said a source.

India's MSP programmes are under scrutiny as it is the first country to invoke the Bali 'peace clause' to justify exceeding its 10% ceiling (of the total value of rice production) for rice support in 2018-2019 and 2019-2020.

While the 'peace clause' allows developing countries to breach the 10% ceiling without invoking legal action by members, it is subject to onerous conditions such as not distorting global trade and not affecting the food security of other members.

SUSPECT MOVES

Tinkering with reservation quota in run-up to elections appears political

Statecraft involves management of competing demands for accommodation and inclusion, without unduly affecting the interests of any section of society. However, some rulers, such as those in Karnataka, want to be seen as discriminating against a minority group in the hope of garnering the support of the majority. The Karnataka government's decision to scrap the 4% quota for Muslims within the Other Backward Classes (OBC) category and earmark an additional 2% each to the dominant Vokkaliga and Veerashaiva-Lingayat communities is a divisive gamble in the expectation of electoral dividends. The BJP regime has also created four sub-categories to introduce internal reservation for different Dalit communities under the Scheduled Caste (SC) category. The scrapping of reservation for Muslims, whose poorer members will now have to compete with the general category for the 10% 'Economically Weaker Sections' quota, is reminiscent of the abrogation of the 5% quota for Muslims in Maharashtra in 2015. While reservation on the basis of religion alone is untenable, it appears that there has been no recommendation from the Karnataka State Backward Classes Commission for the withdrawal of reservation benefits for Muslims. The BJP has sought to portray the introduction of reservation for Muslims in 1995 as an instance of minority appeasement.

It is indeed true that the Constitution does not allow reservation on the basis of religion alone, and that there have been judicial verdicts striking down quotas for Muslims for not being backed by a proper study on the extent of backwardness in the community. However, it is possible to extend reservation benefits to the backward sections among religious minorities identified on the basis of relevant criteria. Some States have been implementing reservation in educational institutions as well as public employment for Muslims by including them in the Backward Classes (BC) list. It is futile to argue that large sections of Muslims have reached a level of social and educational advancement that will justify their exclusion from the BC category, or that they are not under-represented in the services. While Muslim leaders and organisations have opposed the scrapping of the reservation, the categorisation of the SC communities is also controversial. Sections of Dalits are up in arms against the reordering of the 17% SC quota among different groups. Major decisions, such as changing the reservation policy, in the run-up to elections are not merely suspect, but may end up stoking unwanted fires.

TACTICAL RETREAT

Netanyahu cannot deliver on his agenda without alienating large sections

When Benjamin Netanyahu began his current term as Israel Prime Minister in December last year, he identified four main goals for the country's 37th government: block Iran; restore Israel's security and governance; deal with the cost of living problem; and expand the "circle of peace" (with Arabs). But in the past four months, his government's single-minded focus was on passing its judicial overhaul Bills in the Knesset, triggering unprecedented protests. Initially, Mr. Netanyahu, whose coalition has a comfortable majority (by Israeli standards) in Parliament, vowed to press ahead. As protests grew, rebellion broke out. He fired his Defence Minister Yoav Gallant after he called for a delay in passing the Bills, citing national security risks, but the crisis had already grown out of his hands. On Monday, amid protests and a paralysing general strike, the Prime Minister announced the suspension of the Bills, not wanting to push Israel into a civil war. Earlier, Itamar Ben-Gvir, National Security Minister, had warned the Prime Minister against "surrendering to the anarchists" and threatened to quit the coalition if he did so. But Mr. Netanyahu has managed to keep his coalition together, for now. To ensure the support of Mr. Ben-Gvir, a Jewish extremist, the Cabinet would transfer the National Guard to his Ministry.

Mr. Netanyahu, who first came to power in 1996 defeating Shimon Peres, has seen many ups and downs. Yet, the current crisis is arguably his toughest. Mr. Netanyahu has overseen a dramatic shift in Israel's polity towards the extreme right. Its result: the current government, comprising the right-wing (Likud), religious (Shas and United Torah Judaism) and far-right (Religious Zionist and Otzma Yehudit) parties. The extreme right has long argued that the judicial checks and balances are preventing the country from realising its true Jewish identity; the planned judicial reforms, which would give Parliament control over judicial appointments and the powers to override Supreme Court rulings, are a part of this push. Mr. Netanyahu and his allies have been able to control the narrative when it came to the occupation of Palestine or countering external threats, but their move to consolidate more power has triggered widespread resistance from different sections, including from the defence establishment. By suspending the Bills, Mr. Netanyahu has only delayed, and not resolved, the impact of the crisis. He has promised to return the Bills to the Knesset after a month through consensus. But it remains unclear how there will be nationwide consensus on such a polarising issue that has seen even diplomats on strike. He should rather convince his allies of the crisis their government is in, abandon the plan to weaken the judiciary altogether, and focus on the more pressing challenges Israel faces.

THE NEED FOR SECTOR-SPECIFIC SAFEGUARDS IN 'TECHADE'

Sumeysh Srivastava is Manager, Public Policy at The Quantum Hub

India's digital economy is set to reach a whopping $1 trillion by 2026. People are going digital rapidly for everything — from shopping and socialising to education and government services. But, as we embrace convenience, we are also generating massive amounts of personal data. Understanding how this data is handled and protected is fast becoming critical.

The Digital Personal Data Protection (DPDP) Bill 2022, that was proposed recently, comes after five years of discussion and deliberation on a framework to safeguard citizens' information from misuse and unauthorised access. Even as the Bill outlines citizens' rights over their personal data and the responsibilities of data collectors, it lacks specificity in certain clauses such as the interaction with sectoral data protection regulations.

On sectoral regulation, global approaches

The current draft of the Bill tries to tackle the issue of conflicting sectoral regulations; in Section 29, it states that the provisions of the Bill will complement and not create exemptions from existing regulations, but in case of conflict, the Bill will take precedence. The first part allows the Bill to fill in any regulatory gaps, but the second part raises concerns about sectoral regulations that may go beyond what the Bill provides. Data protection and privacy are highly dependent on context, including the type of data collected, how it is collected, the intended use and the associated risks. This makes sectoral expertise crucial to regulate effectively. Sectoral expertise offers a deep understanding of a particular sector, including its market dynamics, technologies, risks and business models. It also enables regulators to engage with stakeholders and industry experts in a well-informed and productive manner.

The global community has adopted two major approaches to regulate privacy and protect data: comprehensive legislation and sector-specific regulations. The European Union's General Data Protection Regulation (GDPR) embodies the comprehensive approach, offering the strongest and most stringent framework to date. Meanwhile, the sectoral approach in the United States, as seen through laws such as the Health Insurance Portability and Accountability Act (HIPAA) in health care, and the Gramm-Leach-Bliley Act (GLBA) for financial institutions, is a patchwork of regulations tailored to specific industries.

The GDPR, despite being a comprehensive framework, has specific provisions for certain industries such as health care (Article 9). Additionally, GDPR also permits EU Member States to implement measures which go beyond the provisions given in the GDPR. For example, Germany also has Bundesdatenschutzgesetz (BDSG), which in some cases, has stricter provisions compared to the GDPR. The European Data Protection Board (EDPB), made up of representatives from each EU member state's data protection authority, provides guidance on the implementation and interpretation of the GDPR, including sector-specific issues.

The American sectoral approach to data protection has been deemed flawed for various reasons, including inconsistent protection, problems in enforcement, overlapping and contradictory provisions, and a lack of federal regulation leaving certain sectors unprotected. This creates confusion and coverage gaps for businesses, and there is no centralised authority to enforce data protection laws, leading to a lack of standardisation. Calls for a federal framework have become increasingly common, even in the United States. The GDPR model may not work for India as the Data Protection Board is designed as a grievance agency, and not as a regulator. The earlier version of the Bill with a Data Protection Authority of India may have been better suited as an independent regulator such as the EDPB.

Therefore, the current draft of the Bill, while a major step towards ensuring the protection of citizens' personal data, needs greater clarity and specificity regarding the interaction with sectoral regulations; we need to draw from our experience to find the right balance

Finding the right space for the Bill

In India, for example, we already have sectoral regulations regarding data protection such as the Reserve Bank of India's directive on storage of payment data and the National Health Authority's Health Data Management Policy. These are the result of extensive industry consultations and expert input. Neglecting these regulations and establishing a new framework would undermine the considerable effort invested in their creation. Any deviation from existing regulations will further require the industry to readjust their operations again at considerable cost.

The DPDP Bill, therefore, must serve as the minimum layer of protection, with sectoral regulators having the ability to build on these protections. This framework will be especially useful in India where not all regulators may have the same capacity. Data protection is a complex subject and we must create room for sectoral experts to weigh in to safeguard the interests of citizens more effectively. This will ensure a safer, more secure, and dynamic digital landscape in the years to come.

WHAT DOES MUSLIM PERSONAL LAW SAY ON INHERITANCE?

Why did a Muslim couple from Kerala decide to get married again under the Special Marriage Act? What are the options for a family with respect to property rights under Islamic law if they only have daughters?

The story so far:

A Muslim couple from Kerala, advocate C. Shukkur and his wife Sheena, former Pro Vice-Chancellor of Mahatma Gandhi University, recently decided to get their marriage registered under the Special Marriage Act (SMA), almost 30 years after having solemnised their nikaah according to Islamic principles. Mr. Shukkur claimed to have got the marriage registered under SMA, so that principles of the secular Act could apply to matters of inheritance in his family, and enable his daughters to inherit the couple's property under the Indian Succession Act, 1925. The couple has three daughters and no sons.

What does Islamic law say?

This decision has put the spotlight on Islamic principles of inheritance. The Koran, through Surah Nisa clearly outlines the principles of inheritance for both direct and indirect heirs. Verse 7 states, "For men there is a share in what their parents and close relatives leave, and for women there is a share in what their parents and close relatives leave — whether it is little or much. These are obligatory shares."

According to unanimously agreed rules on the division of property in Islam, a daughter gets half the share of the son. So if a son inherits a plot of 100 metres from the father, the daughter gets a plot of 50 metres or half the value of the 100-metre plot. On marriage, according to Islam, it is the man who is supposed to bear the family expenses, including residence, food, clothing and medicine besides maintenance of his wife, education of his children and looking after his parents. If the husband predeceases his wife, she gets a one-eighth share of his property, if the couple has children. Otherwise, she gets one-fourth. There is also a share for paternal uncles, aunts, etc, as long as they are blood relatives. Same for grandparents if they are alive. Each parent gets one-sixth if the son passes away before them, and leaves children behind. The problem, as in the case of the Kerala couple arises, when a couple has only a daughter or daughters. The daughters can inherit only two-thirds of father's property, as the holy book says, "If you leave only two or more females, their share is two-thirds of the estate." Beyond that, the shares are for the mother and for paternal blood relatives.

What are the various options?

Within Islamic law, options are available to such a couple in case they want the property to remain within the family. The first option is to make a will or vasiyat under which a person can declare that upon his death, a particular heir shall inherit not more than one-third of the property. This is often done in case one of the children is not financially sound, or has special needs, or has served his or her parents more than other children. For instance, if two children stay abroad and one child stays back with parents to look after them in old age, such a provision may be used. Many Muslim families used this provision during the Partition when many families were divided. While some children crossed over to Pakistan, others remained here with their parents.

Besides vasiyat, there is also the concept of virasat. Under virasat or inheritance, there is the option of hiba which allows unrestricted transfer of wealth or property to a person during the lifetime of the donor. In the case of the Kerala couple, hiba provisions could have been used to transfer all the property in the

name of the daughters during the lifetime of the parents. This is like a gift deed. Importantly, while the Islamic division of property clauses for relatives comes into force once a person dies, a gift deed can be made during one's lifetime. The jury is out whether the Kerala couple's actions went against the tenets of Islam or arose from parents' anxiety to secure the future of their children.

A DISTURBING EXAMPLE OF THE NORMALISATION OF LAWFARE

Gautam Bhatia is a Delhi-based lawyer

The word "lawfare" is a portmanteau of "law" and "warfare". It refers to the weaponisation of law, and of legal systems, in order to intimidate, harm, or delegitimise an opponent (often, a political opponent). In thriving constitutional democracies, judiciaries are often alert to the possibility of powerful political figures deploying lawfare against their rivals, and are quick to turn back such attempts.

However, the conviction of the now former Congress Member of Parliament from Wayanad, Rahul Gandhi, for criminal defamation by a court in Surat, and his subsequent disqualification from the Lok Sabha, represents a disturbing example of the normalisation of lawfare in India.

Let us first take the criminal defamation case. Proceedings against Mr. Gandhi were initiated in a court in Surat, for a political speech he had made at Kolar, Karnataka, in 2019. Legal experts have already pointed out the many surprising features about the process, which involved the complainant getting a year-long stay on the case that he himself had initiated, a different judge, and the sudden acceleration, and atypically quick decision in the case, over the last one month.

Legally unsustainable judgment

Leaving all that aside, however, it is evident that the judgment itself is legally unsustainable. Mr. Gandhi was prosecuted for the following remark: "how are the names of all these thieves 'Modi, Modi, Modi' … Nirav Modi, Lalit Modi, Narendra Modi." The prosecution was based on the complaint of Purnesh Modi, a Bharatiya Janata Party leader, who claimed that by virtue of his surname, he, along with all other people bearing the surname "Modi", had been defamed by Mr. Gandhi's remark.

If this sounds like an absurd argument, it is because it is an absurd argument. To prevent people from being dragged to the courts in frivolous proceedings, the law of defamation is clear that if references are made to an indefinite "class" of people, an individual cannot claim that they are a member of that class, and have, therefore, been defamed. For example, if I say that "all lawyers are thieves", a lawyer cannot come to court and say that they have been defamed, unless they can show a specific imputation identifying them, directly.

The "class of all persons in the world bearing the surname Modi" is a similarly indefinite and indeterminate group. Not only that, Mr. Gandhi's remark did not even insinuate that every person bearing the surname "Modi" was a thief, by virtue of that surname. How, therefore, an individual was able to prosecute the case on the claim that he had been personally defamed by Mr. Gandhi's remark, is extremely bewildering; and the fact that the trial court was willing to entertain the claim, even more so.

Quantum of sentence

While the fact of conviction is one thing, the quantum of the sentence is another. Criminal defamation has a maximum penalty of two years' imprisonment. This 'maximum penalty' is very rarely awarded, on the understanding that defamation is a pure speech offence, and that, ideally, people should not be imprisoned for lengthy periods purely on the basis of something they said. There are almost no recorded instances of courts awarding the maximum sentence, two years, in a criminal defamation case. While sentencing is discretionary, and guidelines for sentencing are rare, the court's decision to award the maximum possible penalty is another strange feature of this case.

It has not escaped public attention that, indeed, the quantum of sentence was exactly that which was needed to attract an MP's disqualification from Parliament. Indeed, immediately after the judgment was delivered, the Lok Sabha Secretariat served a disqualification order upon Mr. Gandhi; at that point, the judgment had not even been translated, and, as legal experts have pointed out, it was doubtful whether the Lok Sabha Secretariat had accessed a certified copy.

The disqualification proceedings are another example of lawfare. The Constitution authorises the disqualification of a Member of Parliament insofar as it is provided for under law. The Representation of the People Act, the relevant law, stipulates that if a person is convicted of any offence and sentenced for a period of not less than two years, he shall stand disqualified from the legislature for the period of his sentence, and for a further period of six years after his release.

Until 2013, the Representation of the People Act also stated that the disqualification would not take effect for a period of three months from the conviction, or if an appeal or a revision was brought within that period that appeal or revision had been disposed of by a court.

The intent behind this proviso was evident: disqualifying an elected member of a legislature is an extremely serious action in a parliamentary democracy that is founded on the principle of representation.

Not only does this deprive the people of their choice of representative, but also, upon disqualification, leaves them without representation until such time that a by-election is announced and the seat is filled. For this reason — and given that we have a hierarchy of courts for precisely the reason that judges are human, and can make mistakes — the Representation of the People Act kept a parliamentarian's disqualification in abeyance until at least one appellate body could scrutinise the initial order of conviction and sentence.

On judicial interventions

However, in 2013, acting on a public interest litigation brought by Lily Thomas, the Supreme Court of India struck down this part of the section as unconstitutional. As the lawyer, Paras Nath Singh, points out, in Lily Thomas it was expressly argued that striking down this grace period would leave politicians at the mercy of frivolous court judgments, but was given short shrift by the Supreme Court. The Supreme Court reasoned that the convicted politician could always move the appellate court for a stay upon their conviction. However, not only does this interpretation concentrate more power in the hands of courts when it comes to the political process but it is also naive from the perspective of lawfare: as the case of Mr. Gandhi has shown, when the Lok Sabha Secretariat issues the disqualification order before even a translation of the judgment was available, and before the convicted individual's lawyers have had a feasible chance to move for a stay, the protection the Court thought was available is nothing more than a chimera.

Indeed, the Lily Thomas judgment is just one of many examples where, acting on so-called "public interest litigation petitions", the Supreme Court has intervened in the political process. This has ostensibly been with a view to "purifying" the process and removing criminal elements; what it has done, however, has been to make lawfare easier. The case of Mr. Gandhi highlights that amply.

For these reasons, the conviction and disqualification of Mr. Gandhi represents another signpost in a concerning drift towards the normalisation of lawfare as a political tactic. It is concerning because one crucial component of the legitimacy of courts is their reputation for impartiality between contending political forces. Recent examples from Poland and Hungary have shown how quickly that reputation can be lost. It is for the judiciary to ensure that what could also happen here, does not happen here.

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