

LEGAL REASONING

A week after Natasha Narwal and Devangana Kalita, activists from the feminist collective Pinjra Tod were arrested, Narwal has been charged under the Unlawful Activities Prevention Act (the “UAPA”).

Since the anti-Citizenship (Amendment) Act (the “CAA”) protests and abrogation of Article 370, this legislation has been a recurring and prominent feature—invoked against activists like Sharjeel Imam, students such as Safoora Zargar, Meeran Haider and Gulfisha Fatima, and journalists in Kashmir, most recently, 26-year-old photojournalist Masrat Zahra.

The UAPA is a special statute which was enacted in 1967 as a law to prevent, curb and punish any ‘unlawful activity’. Such activities are seditious activities or other activities against the territorial integrity and sovereignty of India. The term “sedition” has been defined in Section 124A of the Indian Penal Code, 1860 (the “IPC”), and the same definition is used to decide if a particular activity is ‘seditious’ under the UAPA.

Section 124A of the IPC defines sedition as: “Words, either spoken or written, or signs, or visible representation, or otherwise, that bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards, the Government established by law in India.” Section 124A of the IPC goes on to explain that the expression “disaffection” includes disloyalty and all feelings of enmity. The section also clarifies that comments expressing dissatisfaction with the measures of the Government with a view to obtaining their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not amount to sedition.

The UPA government in 2004 expanded the scope of UAPA to include terrorist activities and targeted terrorist organizations. So these provisions are to be invoked only in cases of threat to the sovereignty and territorial integrity of India. The UAPA was amended in 2019, and since then, the government has also been empowered to designate individuals as terrorists under the UAPA.

[Extracted, with edits and revisions, from "From Pinjra Tod to Kashmiri journalists: What's the deal with UAPA?", by Asmita Bakshi, *LiveMint*, <https://www.livemint.com/mint-lounge/features/from-pinjra-tod-to-kashmiri-journalists-what-s-the-deal-with-uapa-11590915249625.html>]

11.1 Seema is a final-year student at the University of Delhi. She stays in the University hostel, as her home is another city in a different state. The University hostel’s rules say that women must return to the hostel by 8 p.m. every evening, whereas men are only required to return to the hostel by midnight. Seema is very upset with these rules, since she feels they discriminate unfairly between men and women. Along with some friends, she organises a series of protests on the University’s campus, asking that the rules be changed and made the same for men and women. At one such protest, she says to the gathered crowd that “These rules are a reflection of how men rule society. We must oppose these rules! We must break these rules, and along with that, the unfair advantage of men in our society!” When the local police come to hear of this, they arrest Seema and file a case against Seema for sedition under the UAPA. Will the police case succeed?

- (a) No, since Seema’s statement was not ‘seditious’ under the UAPA.
- (b) No, since Seema is only a student, and students cannot be arrested under the UAPA.

- (c) Yes, since challenging the unfair advantages of men amounts to the same thing as challenging the government.
- (d) Yes, since a university campus is not the appropriate place to hold protests.

11.2 Seema's roommate at the hostel, Geeta, is a big sports fan, and follows international cricket very closely. One day, during a casual conversation in the University canteen among friends, Geeta says that the Pakistani cricket team is in much better form than the Indian cricket team, and that she would be supporting the Pakistani team in the next T20 World Cup. Her friend Sumit is very upset when he hears this, and accuses Geeta of being a traitor. He files a complaint under the UAPA at the local police station, accusing Geeta of having caused disaffection against the Government of India. Is Sumit right?

- (a) Yes, it would be traitorous to support the cricket team of another country over the Indian team.
- (b) Yes, since supporting another country's team shows that Geeta was disloyal to India.
- (c) No, since sports and sporting activities are not covered under the UAPA.
- (d) No, since merely supporting another country's team would not amount to exciting feelings of disloyalty or enmity against the Government of India.

11.3 Sumit also stays in the University hostel, and his roommate, Colin, has a very short temper. Colin often gets very angry at things and says and does things that he later regrets. One day, Colin was attending a class held over video conferencing, where the professor was discussing the plight of migrant workers in India. Upset at the way the Government handled the lockdown imposed for the Covid-19 pandemic, and the misery it caused migrant workers, Colin unmuted himself, and shouted out loud for the whole class to hear: "This government is terrible! We should all come together and bring it down! Let's go and smash all the government vehicles we can find near our homes!" Has Colin violated the UAPA?

- (a) No, since Colin had only spoken through video conferencing, and not in person to anyone else.
- (b) Yes, since Colin was encouraging others to commit violence against Government property.
- (c) No, since Colin often got angry and said things that he later regretted.
- (d) Yes, since interrupting a professor in the middle of a class is seditious.

11.4 Gautami, one of Colin's classmates, was very shaken and upset by Colin's statements. For some years, Gautami has been studying relations between Nepal and India, and feels that India has been unfair to Nepal on many occasions. A few hours after the class where the incident involving Colin took place, Gautami posted a message on a social networking website, along with a map of India and Nepal; in the map, Gautami had altered the border between the two countries, such that large parts of the state of Bihar were shown as part of Nepal. In her message, she also wrote "India has long been unfair to Nepal and grabbed its territory! This map shows what the true

boundary between India and Nepal should be!” When the police saw this post, they filed a case against Gautami under the UAPA. Has Gautami violated the UAPA?

- (a) No, since Gautami’s actions did not amount to causing hatred against the Government of India.
- (b) No, since Gautami was only expressing her opinion, which is protected by the freedom of speech.
- (c) Yes, since by posting the message, Gautami had acted against the territorial integrity of India.
- (d) Yes, since Gautami was spreading lies and fake news.

11.5 When she comes to hear about the incidents involving Seema, Geeta, Colin, and Gautami, the Vice Chancellor of the University is very upset. At a conference, she says “This Government does not seem to have taken students’ sentiments into accounts in framing its policies. The Government should undertake sensitisation programmes so that the police do not go about arresting students for trivial reasons.” The police claim that the Vice Chancellor’s statements amount to sedition under the UAPA. Are they right?

- (a) Yes, since the Vice Chancellor’s statements would create hatred against the Government of India.
- (b) No, since the vice Chancellor was only suggesting her dissatisfaction with the government’s measures, and encouraging their change through lawful means.
- (c) Yes, since students who heard the Vice Chancellor were likely to commit violence against government property.
- (d) No, since the Vice Chancellor had not committed any violence against the government herself.

Do you un mindfully forward unverified market tips on WhatsApp? The habit could land you in trouble with the Securities and Exchange Board of India (“SEBI”). It wouldn’t matter even if you received the tip from someone else and you were just forwarding it. You can also be penalised even if you have not used the tip to make money. This is what the latest orders passed by SEBI in the WhatsApp leaks episode signify.

Last Friday, SEBI imposed a fine of 15 lakh each on two senior employees working at Antique Broking for their involvement in the WhatsApp leaks. Both the executives at Antique were part of several WhatsApp investor groups where insider tips were being exchanged. The tips largely dealt with probable earnings of various companies and other news developments. They used to forward these tips to their clients who were institutional investors. Some of the predictions turned out to be precise, which has now landed them in trouble.

The messages included sales reports of several blue-chip companies including Axis Bank, Asian Paints, Wipro and Mindtree. Such tips are known as Unpublished Price Sensitive Information (“UPSI”) in legal parlance and refer to any company information that has not been disclosed to shareholders yet.

Lawyers say, most individuals think it is harmless to share such forwards with their peers over WhatsApp even if they don't intend to make a profit out of such tips. However, handling, discussing, sharing, or using, UPSI directly or indirectly itself is a violation of the rules.

In this case, the executives argued they didn't know that the source of information came from company insiders. They also claimed that a lot of predictions they forwarded turned out to be false. But SEBI brushed aside those arguments.

There is a rule of thumb to decide if the information is UPSI or not. If you have got it from public media such as a newspaper or a TV broadcast or even a public Twitter post, or a stock exchange filing, there is no problem in sharing it with others. However, if you have received it through private means, which include closed WhatsApp groups, any personal chats or even phone conversations, you need to be careful handling such data.

[Extracted, with edits and revisions, from "Beware, Sebi watching! WhatsApping stock tips may land you in trouble", by Pavan Burugula, *The Economic Times*, <https://economictimes.indiatimes.com/markets/stocks/news/beware-sebi-watching-whatsapping-stock-tips-may-land-you-in-trouble/articleshow/76147212.cms>]

12.1 Suresh is a stock broker, and works at “Dalal Street Stock Broking Limited”, a big stock trading firm based in Mumbai. He is also a member of a WhatsApp group that the other residents of the building where Suresh stays have set up, called “Our Building Group”. Usually, members exchange information about their building, and other events of importance to residents of the building. One day, however, Suresh shares some information that he has received on the “Our Building Group”. This information relates to a company whose shares are being traded on the stock exchange, and is not publicly available yet. Mahesh, another member of the “Our Building Group”, reads this information, and quickly buys some shares in the company. He later sells them for a huge profit. SEBI comes to know about this, and claims that Suresh has violated the rules relating to UPSI. Suresh says he shared the information on the “Our Building Group” by mistake, and is therefore not guilty of breaking the rules. Is he right?

- (a) Yes, because if anyone should be punished, it is Mahesh, who bought and sold the shares in the company, and not Suresh.
- (b) No, since Suresh had shared UPSI on a WhatsApp group with the other members of the group.
- (c) Yes, since sharing UPSI by mistake is not a violation of the rules about UPSI.
- (d) No, since the “Our Building Group” was not created to share UPSI.

12.2 Ever since he had made a profit by buying and selling the shares of the company that Suresh had messaged about, Mahesh has developed a keen interest in the stock exchange. He subscribes to various WhatsApp group where people share information about shares and companies. One day, he receives a tip based on some UPSI on one of these WhatsApp groups. He decides to return Suresh's favour, and forwards the tip to Suresh. SEBI has been keeping a close eye on Suresh, and when they realise that Mahesh has sent him this tip, SEBI decides to take action against Mahesh, claiming that Mahesh has violated the rules relating to UPSI. Are they right?

- (a) Yes, since Mahesh should have verified the information before forwarding it to Suresh.

- (b) Yes, since Mahesh had shared UPSI with Suresh on WhatsApp.
- (c) No, since Mahesh was only trying to return Suresh's favour.
- (d) No, since Mahesh had not used the information in the tip, and was only forwarding it to someone else.

12.3 Ganesh is a friend of both, Suresh and Mahesh, and stays in the same building as them. Ganesh, however, is very wary of the stock market and prefers not to deal in shares. One day, he receives and an invitation to join a WhatsApp group from Mahesh. Mahesh calls Ganesh immediately after sending him the invite and tells him that the members of the group that he has invited Ganesh to join, regularly exchange UPSI on it, which would help Ganesh make a lot of money. Ganesh, however, refuses to join the group, and deletes the invitation. SEBI, however, decides to take action against Ganesh, saying that by simply receiving the invitation to join a group where UPSI is shared, Ganesh has broken the rules relating to UPSI. Is SEBI right?

- (a) Yes, since Ganesh had violated the rules by being on another WhatsApp group where Suresh and Mahesh were also members.
- (b) No, since Ganesh was very wary of the stock market, and did not deal in shares.
- (c) No, since Ganesh had not accepted the invitation to join the group, and had not received any UPSI.
- (d) Yes, since allowing others to send such invitations is itself a violation of the UPSI rules.

12.4 Ramesh also stays in the same building as Suresh, Mahesh, and Ganesh, and is also a member of the "Our Building Group". He has a keen interest in company law, and regularly follows market news to understand the area better. He joins a WhatsApp group called "Company Insights" at the invitation of one of his friends. The members of the group share their opinions about various companies on that group. These opinions include their subjective comments on news events relating to various companies. When SEBI find out about this group, they decide to take action against all the members of the group, including Ramesh, claiming that they have all violated the rules relating to UPSI. Has Ramesh violated the rules relating to UPSI?

- (a) No, since the opinions shared on the group were subjective, and did not include any UPSI.
- (b) No, since only the group administrator should be punished, not all the members of the group.
- (c) Yes, since the people on the group used to share their opinions about companies on the group.
- (d) Yes, since Ramesh had accepted his friend's invitation to join the group.

12.5 Dinesh, Ramesh's brother, holds a very senior position at a large company whose shares are traded on the stock exchange. Since he holds such a senior position, he has access to a lot of information before it is disclosed to the company's shareholders. One

evening, Dinesh visits Ramesh for dinner. The two brothers share a few drinks before dinner; Dinesh gets very drunk, and mistakenly blurts out some information about the company that is to be announced to the shareholders of the company two days later. The next morning, Ramesh buys some shares of the company based on the information Dinesh had revealed the previous evening; he later sells the shares for a massive profit after the information is announced to the shareholders of the company. SEBI decides to take action against Ramesh for violating the rules relating to UPSI. Is Ramesh guilty of breaking these rules?

- (a) No, since Dinesh had only shared the information at his brother's house, not on a WhatsApp group.
- (b) No, since family members are free to discuss anything they like amongst themselves.
- (c) Yes, since Dinesh had violated the law by getting drunk.
- (d) Yes, since the information Dinesh had revealed was UPSI, since it had not yet been announced to the shareholders of the company.

Under the Indian Constitution, which came into force, or commenced, on 26 January 1950, certain fundamental rights are available only to citizens of India, namely: right against discrimination on the grounds of religion, race, caste, sex or place of birth (Article 15); right to equality of opportunity in matter of public employment (Article 16); freedom of speech and expression, assembly, association, movement, residence and profession (Article 19); cultural and educational rights (Article 29 and 30); and right to vote and become members of the union and state legislatures.

Equality before the law or equal protection of the laws within the territory of India (Article 14) and protection of life or personal liberty (Article 21) are available to non-citizens as well.

There are some categories of persons, identified between Articles 5 and 7 of the Constitution, who are deemed eligible to become citizens of India:

i) Citizenship by domicile (Article 5): This is applicable to a person born in India before the coming into effect of the Constitution, or either of whose parents was born in India before the coming into effect of the Constitution, or who had resided in the territory of India for not less than five years immediately before the commencement of the Constitution. All such persons would be eligible to be citizens of India. For the purposes of this Article, as well as Article 6 and 7, "India", or "the territory of India" means the territory of India as it was after August 15, 1947.

ii) Citizenship of migrants to India from Pakistan (Article 6): Persons who had previously not resided in India, but had migrated from Pakistan to India have been classified into two categories:

a) those who came to India from Pakistan before July 19, 1948 were eligible to become citizens of India if they had been residing in India since the date of their migration.

b) those who came to India from Pakistan on or after July 19, 1948 were eligible to become citizens of India if they registered as a citizen of India, after residing in India for at least six months before the date of applying for registration.

iii) Citizenship of migrants of Pakistan (Article 7): If a person residing in India had migrated to Pakistan after March 1, 1947, but returned to India on the basis of a permit for resettlement in India, they would be entitled to become a citizen of India if they register themselves as a citizen of India, after residing in the territory of India for at least six months before the date of applying for registration.

[Extracted, with edits and revisions, from "Explained: The Nuts and Bolts of Indian Citizenship", by Shruti Jain, *The Wire*, <https://thewire.in/rights/india-citizenship-constitution>]

13.1 Zubair was born in the territory of what is now Bangladesh in 1930. Since 1942, however, he had been residing in Bangalore. Since he ran an international trading business, he often travelled abroad as well. After the Constitution of India came into effect, he applied for Indian citizenship. Was Zubair eligible to become a citizen of India?

- (a) No, since he often travelled abroad.
- (b) No, since he was born in the territory of what is now Bangladesh.
- (c) Yes, since he had applied to become a citizen of India.
- (d) Yes, since he had been residing in the territory of India since 1942.

13.2 After the partition of India was announced, Saadat decided to move to Lahore in Pakistan. He went to Lahore on February 25, 1947. After some months, however, Saadat decided to move back to India. In March 1951, he obtained a permit for resettlement in India, and moved back to Bombay, where he had earlier resided. In December 1951 he applied to be registered as a citizen of India. Was Saadat entitled to be registered as a citizen of India?

- (a) Yes, since he had moved back to India on the basis of a permit for resettlement in India.
- (b) No, since he had migrated to Pakistan before March 1, 1947.
- (c) No, since he had decided to move to Pakistan voluntarily.
- (d) Yes, since he had resided in the territory of India for more than six months before applying for registration as a citizen.

13.3 Guneet had been living in a part of Punjab that came within the territory of Pakistan after the partition of India. After the country gained independence, Guneet decided to move to Amritsar in India. She arrived in Amritsar on July 19, 1948 and applied for registration as a citizen of India the very next day. Would her application succeed?

- (a) No, since she had not been born within the territory of India.
- (b) Yes, since she had been residing in the territory of India since the date of her migration.
- (c) No, since she would have had to reside in the territory of India for at least six months after arriving in India.

- (d) Yes, since she had been forced to move to India because of the fear of religious discrimination.

13.4 Sulekha and her parents were all born in Kenya. After India became an independent country, Sulekha decided to move to Lucknow in India. Once the Constitution came into force, however, the authorities told Sulekha that she was not eligible to be a citizen of India. Were the authorities correct?

- (a) No, since she had not moved to India from Pakistan.
- (b) No, since she had moved to India as soon as the country became independent.
- (c) Yes, since she had not moved to India on the basis of a permit for resettlement in India.
- (d) Yes, since she had not resided in the territory of India for five years before the commencement of the Constitution.

13.5 Manmeet was born and had lived in a village that became a part of Pakistan after the partition of India. Manmeet decided to move to India, but could only do so some months after independence, and finally arrived in India on 15 May 1948. He decided to apply to be registered as a citizen of India within ten days of reaching and staying in India. Would his application succeed?

- (a) Yes, since he had been residing in India since the date of his migration.
- (b) Yes, since the village he used to stay in had become a part of Pakistan.
- (c) No, since he had not resided within the territory of India for at least six months before applying.
- (d) No, since he had not been born in India.

The *Transgender Persons (Protection of Rights) Bill, 2016* (the “**Bill**”) seeks to recognise transgender persons, and confer anti-discriminatory rights and entitlements related to education, employment, health, and welfare measures.

The Bill provides for ‘self-perceived gender identity’ i.e. persons can determine their gender on their own. This is in line with a Supreme Court judgment (2014) which said that the self-determination of one’s gender is part of the fundamental right to dignity, freedom and personal autonomy guaranteed under the Constitution.

Along with the provision on ‘self-perceived gender identity’, the Bill also provides for a screening process to obtain a ‘Certificate of Identity’. This Certificate will certify the person as ‘transgender’. An application for obtaining such a Certificate has to be made to a District Screening Committee which must comprise five members including a medical officer, psychologist or psychiatrist, and a transgender person.

The Bill provides certain entitlements to transgender persons for their inclusion and participation in society. These entitlements, however, would only be available to a person who has had themselves certified as transgender in the manner the Bill describes.

As per international standards, 'transgender' is an umbrella term that includes persons whose sense of gender does not match with the gender assigned to them at birth. For example, a person born as a man may identify with the opposite gender, i.e., as a woman. In addition to this sense of mismatch, the definition provided under the Bill also lists further criteria to be defined as a transgender person. These additional criteria include being (i) 'neither wholly male nor female', or (ii) 'a combination of male and female', or (iii) 'neither male nor female'. For a person to successfully apply for a Certificate of Identity and be classified as a transgender person, they must show either this 'sense of mismatch', or fulfil any of these additional criteria.

The Bill specifies certain offences which include: (i) compelling transgender persons to beg or do forced or bonded labour, and (ii) physical, sexual, verbal, emotional or economic abuse. These offences will attract imprisonment between six months and two years, in addition to a fine.

[Extracted, with edits and revisions, from "Explained: The Transgender Persons (Protection of Rights) Bill, 2016", by Nivedita Rao, PRS Legislative Research, <https://www.prsindia.org/print/583789>]

Answer the following questions assuming that the *Transgender Persons (Protection of Rights) Bill, 2016* has been passed and is now a law, in the form described in the passage above.

14.1 Grace was born as a man, but upon attaining adulthood, started identifying increasingly as a woman. Grace started wearing women's clothes, and asked to be identified as 'she'. When the Bill was passed, Grace applied for a Certificate of Identity to the local District Screening Committee. Is Grace eligible to be certified as a transgender?

- (a) No, since Grace is biologically a man.
- (b) Yes, since Grace was born as a man but now identifies as a woman.
- (c) No, since Grace is wholly male.
- (d) Yes, since Grace wears women's clothes.

14.2 Rajesh was brought up as a boy and sent to an all-boys school by their parents. However, Rajesh has never felt completely comfortable identifying as a man. Rajesh appears before the District Screening Committee and asks for a Certificate of Identity, so as to be classified as transgender. The District Screening Committee decides that Rajesh is not a man; it also determines that Rajesh is not a woman. Would Rajesh's application for a Certificate of Identity be successful?

- (a) Yes, since the Committee cannot decide if Rajesh is a man.
- (b) No, since Rajesh was brought up as a boy.
- (c) Yes, since the Committee has decided that Rajesh is neither wholly male nor female.
- (d) No, since Rajesh should have felt comfortable identifying as a man after attending an all-boys' school.

14.3 Sameena wishes to apply for a Certificate of Identity and applies to the District Screening Committee. Sameena appears before the Committee, but they reject her

application for certification. Sameena is disappointed with this, and challenges the decision of the Committee; Sameena says that the Committee had only male members, and so, it was not formed in the manner the Bill lays down. Is Sameena correct?

- (a) No, since there is nothing preventing the formation of an all-male District Screening Committee under the Bill.
- (b) Yes, since Sameena wishes to be certified as a transgender person.
- (c) No – as long as the Committee had a medical officer and a psychologist or psychiatrist, it would be valid under the Bill.
- (d) Yes, since the Committee did not have a transgender person on it.

14.4 Supreet had applied for a Certificate of Identity and been granted one. Born as a boy, Supreet had always identified as a woman. When Supreet visited his parents and told them that she had obtained a Certificate of Identity, however, her father got very upset and started yelling and screaming at her. He told Supreet that he never wanted to see Supreet again. When Supreet tried to protest, her father got even more upset, and started hitting Supreet. Supreet left her parents' home, and had to be taken to the hospital for treatment for the injuries caused to her by her father. Supreet later decided to complain against her father, saying that he should be punished under the Bill. Will Supreet's complaint succeed?

- (a) No, since a child cannot file a complaint against their parents.
- (b) Yes, since her father had physically, verbally, and emotionally abused her, which is an offence under the Bill.
- (c) No, since the Bill only punishes abuses against transgender persons, and Supreet was born a boy.
- (d) Yes, since Supreet's father should have been more supportive of her choices.

14.5 Beena read in the newspaper about the decision of the Supreme Court which held that the self-determination of one's gender is a fundamental right. Beena was excited at reading this news since Beena had always identified as a man despite being born a woman. Beena decided to take advantage of the Supreme Court decision, and the passing of the Bill, and decided to apply for certification as a transgender. He, therefore, wrote a letter to the Supreme Court, describing his situation. Beena then applied for some entitlements under the Bill as a transgender person, but was refused – the authority claimed that Beena had not been certified as a transgender person in the manner set out in the Bill. Is the authority correct?

- (a) No – since the Supreme Court is the highest authority in the country, a letter to the Supreme Court has more weight than an application to the District Screening Committee.
- (b) Yes, since Beena was not eligible for certification as a transgender person under the Bill.
- (c) Yes, since Beena had written a letter to the Supreme Court, but had not applied to the District Screening Committee.

- (d) No, since the Supreme Court had declared the self determination of gender a part of one's fundamental rights.

Despite having a law against child marriages for the last 90 years, child marriages are a reality in our country. As per statistics, child marriages account for 27 per cent of marriages in India.

Legally speaking, a marriage in which either the girl is below 18 years of age, or the boy is below 21 years of age is a "child marriage". A girl below 18 years of age and a boy below 21 years of age are regarded as 'children' under the Act. The *Prohibition of Child Marriage Act, 2006* (the "Act") has a threefold purpose, i.e., prevention of child marriages, protection of the children involved, and prosecution of offenders. This law has declared child marriage to be a punishable crime. An order can be issued by the court to prohibit its solemnisation and if a marriage is solemnised after such an order, then such a marriage shall be declared as null and void, meaning that it never existed.

'Solemnisation' here would mean conducting the religious ceremonies required to finalise a marriage under the religion of the persons being married, such as the *saptadi* for Hindus and *offer-acceptance* for Muslims. Under Indian law, if a marriage has been solemnised, then the persons involved are 'married'.

This law also prescribes punishments for performing, conducting and helping conduct child marriages. Even the parents of the children involved can be punished for promoting or permitting child marriage. The Act also punishes an adult male who marries a child and also requires the husband to provide maintenance to his minor bride till her remarriage.

Under Section 3(3) of the Act, both the boy as well as the girl have the right to opt out of a child marriage until two years after attaining majority i.e. up to the age of 20 years for a girl and 23 years for the boy.

[Extracted, with edits and revisions, from "Legal status of child marriages in India", by Vageshwari Descale, *The Times of India*, <https://timesofindia.indiatimes.com/blogs/legally-speaking/legal-status-of-child-marriages-in-india/>]

15.1 Pinky, a 16-year-old girl, spent a lot of time talking to her neighbor, Ramesh, who was 23 years old. One day, Ramesh convinced Pinky to run away with him and get married. Pinky readily agreed, and the two left their homes early one morning, went to a temple in another town, and had the priest there conduct the ceremonies required for their marriage to be finalized. When Pinky's parents found out about this, they filed a complaint against Ramesh, claiming that this was a child marriage and that Ramesh should be punished under the Act. Are Pinky's parents correct?

- (a) Yes, since Ramesh should have taken Pinky's parents' permission before marrying her.
- (b) No, since Pinky had voluntarily run away with Ramesh, and so, the law should respect her wishes.
- (c) Yes, since Pinky was only 16 years old.
- (d) No, since they had gone to another town to get married.

15.2 After Pinky's parents brought her home, she changed her mind about Ramesh, and stopped meeting him or speaking with him entirely. Three years after the incidents described in the previous question, Pinky met a man called Ramchandra and decided to get married to him. When Ramesh heard about this, he told Pinky's parents that the proposed marriage was impossible, since Pinky was still Ramesh's wife. Was Ramesh correct?

- (a) No, since Pinky had stopped meeting or speaking with Ramesh entirely.
- (b) Yes, since their marriage had been solemnised.
- (c) Yes, since Pinky had run away with Ramesh earlier.
- (d) No, since Pinky was below 18 years of age when she ran away with Ramesh.

15.3 Five years after the incidents described in the first question in this set, Pinky decided yet again that she wanted to get married, this time to a man called Lakshmana, who she met online. Pinky, therefore, decided to remove all obstacles in her path, and this, time, decided to file an application under Section 3(3) of the Act, to cancel her previous marriage to Ramesh. The authority responsible for these matters, however, refused to grant Pinky's request, since, according to him, the time limit under the Act, within which Pinky could file such an application, had expired. Is he right?

- (a) Yes, since Pinky should file for a divorce under some other law.
- (b) No, since no one can force a person to remain in a marriage they do not want.
- (c) No, since Pinky had the right to cancel her marriage to Ramesh at any time.
- (d) Yes, since Pinky had crossed 20 years of age at the time she filed the application.

15.4 Some days after the incidents described in the previous question, Pinky and her parents were invited to visit the wedding ceremony of one of their relatives. When they reached the wedding venue, Pinky was shocked to hear that the bride and groom were both 20 years old. Pinky asked the groom's mother about this, and the mother told Pinky that the groom had already started his own business, was earning well, and was completely independent. Pinky, however, called the police and complained about what she said was a child marriage; specifically, she complained to the police about the groom's mother and said she should be punished under the Act. Is Pinky right?

- (a) No, since the groom was already financially independent, and could take care of his bride.
- (b) No, since the bride was over 18 years of age.
- (c) Yes, since the groom's mother should have acted more responsibly.
- (d) Yes, since the parents of the children involved in a child marriage can be punished under the Act.

15.5 Not satisfied with upsetting her family by complaining about the wedding she went to with her parents, Pinky decided to keep a close eye on the priest who had been called to perform that wedding. She soon realized that the priest often conducted weddings

that involved underage persons. At one such wedding, she called the police and complained about the priest. Can the priest be punished under the Act?

- (a) Yes, since he had been performing rites for child marriages.
- (b) No, since it is the parents and family of the children involved in the marriages who should be punished, not the priest.
- (c) Yes, since it was the priest's responsibility to warn the families involved about the dangers of child marriage.
- (d) No, since Indians have the freedom of religion, a priest cannot be punished under the law.

Last year, several Jio users from different states reported that sites like Indian Kanoon, Reddit and Telegram were inaccessible through their connections. While attempting to access the website, the users were presented with a notice that the websites were blocked on orders from the Department of Telecommunications (the "DoT").

This instance is symptomatic of a larger problem of opaque and arbitrary content takedown in India, enabled by the legal framework under the *Information Technology Act, 2000* (the "IT Act"). The Government derives its powers to order intermediaries (entities storing or transmitting information on behalf of others, a definition which includes internet service providers, news websites, and social media platforms alike) to block online resources through S. 69A of the IT Act. Apart from this, section 79 of the IT Act is also relevant.

Under section 69A, the Central Government can direct any agency of the government or an intermediary to block public access to any information generated, transmitted, received, stored, or hosted in any computer resource, which means, essentially, that under this Section, the Central Government can direct a government agency or an intermediary to block public access to a website, or to some content or information posted on a website (such direction is called a "Content Removal Request"). Under S. 69A, a Content Removal Request can be sent by authorised personnel in the Central Government, not below the rank of a Joint Secretary. The Central Government can issue a Content Removal Request under S. 69A if it feels that the blocking of a website, or any information on a website, is necessary in "the interest of the sovereignty and integrity of India, defence of India, the security of the state, friendly relations with foreign states or for preventing incitement to commit violence."

Under S. 79 of the IT Act, if an intermediary or government agency, upon receiving actual knowledge, or on being notified by the Central Government that any information, website, data or communication link residing in or connected to a computer resource controlled by the intermediary or government agency is being used to commit an unlawful act, fails to remove or disable access to that material within 24 hours of receiving such knowledge or notice, then the intermediary will be punished under the provisions of the IT Act.

[Extracted, with edits and revisions, from "Content takedown and users' rights", by Gurshabad Grover and Torsha Sarkar, *Medianama*, <https://www.medianama.com/2020/02/223-content-takedown-and-users-rights/>]

16.1 Sunil is the editor of the popular website 'Mediagaana', which carries various journalistic stories on Internet law and policy in India. In his free time, Sunil also publishes a print newspaper that publishes controversial stories on Internet law and

policy in India, ‘Mediaraga’. In its latest issue, Mediaraga carried a story severely criticising the government’s policy on Content Removal Requests. The Central Government, through a Joint Secretary, issues a Content Removal Request to Sunil, asking him to stop circulating copies of Mediaraga. Sunil challenges this Notice in court. Will he succeed?

- (a) No, since Sunil had clearly violated the provisions of S. 69A of the IT Act, and the Notice had been validly issued through a Joint Secretary.
- (b) No, since the story in Mediaraga could incite people to commit acts of violence.
- (c) Yes, since a Content Removal Request can only be issued in relation to information posted on a computer resource, and not in a printed newspaper.
- (d) Yes, since there was nothing in the story that would justify issuing a Content Removal Request.

16.2 Mediagaana published a story written by a guest author, which criticised the government’s actions in relation to Internet blocking in Kashmir. The article urged readers to “take up arms and fight for your rights against this unjust government”. The Joint Secretary for the Telecom Department of the State of Maharashtra read the article, and issued a Content Removal Request to Mediagaana, directing it to take down the article. Mediagaana challenges the Notice in court. Will Mediagaana win the case?

- (a) Yes, since there was nothing in the article which violated the provisions of S. 69A of the IT Act.
- (b) Yes, the notice was issued by a State Government, and not by the Central Government.
- (c) No, since Sunil also ran a separate print newspaper.
- (d) No, since the article was clearly inciting readers to commit acts of violence, and the Notice had been issued by a Joint Secretary to the government.

16.3 The Joint Secretary for the Telecom Department of the State of Maharashtra contacts the Joint Secretary for the Telecom Department of the Central Government, Mr. Weblekar, and informs him about the article on Mediagaana mentioned in the previous question. Mr. Weblekar is upset at reading the article, and publishes a post on a popular social networking website, which says “I disagree strongly with the contents of this article published on Mediagaana. It is false, untrue, and malicious.” Is Mediagaana required to block public access to the article under S. 69A of the IT Act?

- (a) Yes, since the Central Government had issued a valid notice under S. 69A of the IT Act.
- (b) Yes, since a Joint Secretary of the Central Government had criticised the article in such severe terms.
- (c) No, since Mr. Weblekar’s post did not mention anything that could be considered a violation of S. 69A of the IT Act.
- (d) No, since no Content Removal Request had been issued to Mediagaana.

16.4 Mr. Weblekar decides to keep a close watch on Mediagaana, and visits the website every day. One day, he notices an article relating to website security on Mediagaana. The article describes the increasing number of cyber-attacks being conducted on websites, and describes some means popularly used by hackers to attack websites. Mr. Weblekar is informed by Ms. Netconnectkar, a senior police officer in the Indian Police Service (“IPS”) that the article is being used by notorious elements to train hackers to attack a few private websites. Mr. Weblekar promptly issues a Content Removal Request to Mediagaana under S. 69A of the IT Act, directing it to block public access to the article. Mediagaana challenges this notice in court as well. Will Mediagaana win?

- (a) Yes, since the Content Removal Request should have been issued by Ms. Netconnectkar and not by Mr. Weblekar.
- (b) No, since the article was being used to train hackers to attack websites.
- (c) Yes, since the article did not violate the provisions of S. 69A of the IT Act.
- (d) No, since the article was being used for unlawful activities and the Central Government had issued a valid Content Removal Request to Mediagaana.

16.5 Mr. Weblekar decides to issue another notice to Mediagaana under S. 79 of the IT Act in relation to the same article mentioned in the previous question, directing Mediagaana to remove the article from its website. Sunil receives the notice at 5 p.m. on April 2, 2020. At 7 p.m. on April 3, 2020, Mr. Weblekar notices that the article is still accessible on the Mediagaana website. He therefore decides to file a complaint in court, asking that Mediagaana be punished under the provisions of the IT Act. Will Mr. Weblekar succeed?

- (a) Yes, since Mediagaana had not removed nor disabled access to the article within 24 hours of receiving a notice under S. 79 of the IT Act to do so.
- (b) Yes, since this was the second time he was issuing a notice to Mediagaana.
- (c) No, since Mr. Weblekar had already issued a Content Removal Request under S. 69A to Mediagaana.
- (d) No, since there was nothing in the article that threatened the sovereignty and integrity of India.

Following the recommendation of the Election Commission (the “EC”), the President disqualified 20 MLAs of the Delhi Legislative Assembly last month for holding an ‘office of profit’. The legislators in question were appointed as parliamentary secretaries to various ministries in the Delhi government.

What is the concept of ‘office of profit’?

MPs and MLAs, as members of the legislature, hold the government accountable for its work. The essence of disqualification under the office of profit law is if legislators hold an ‘office of profit’ under the government, they might be susceptible to government influence, and may not discharge their constitutional mandate fairly.

According to the definition, what constitutes an ‘office of profit’?

An office of profit has been interpreted to be a position that brings to the office-holder some financial gain, or advantage, or benefit. The amount of such profit is immaterial.

The Supreme Court ruled that the test for determining whether a person holds an office of profit is the 'test of appointment'. The factors to be considered are: (i) whether the central government or any state government ("the Government") is the appointing authority, (ii) whether the Government has the power to terminate the appointment, (iii) whether the Government determines the remuneration, and (iv) what is the source of remuneration (is it from government funds?). If the answer to two of these questions is 'yes', the person is considered to be holding an 'office of profit'.

What does the Constitution say about holding an 'office of profit'? Can exemptions be granted under the law?

Under the provisions of Article 102 and Article 191 of the Constitution, an MP or an MLA (or an MLC) is barred from holding any office of profit under the central or any state government. The articles clarify that "a person shall not be deemed to hold an office of profit under the government of India or the government of any state by reason only that he is a minister". The Constitution specifies that the number of ministers including the Chief Minister has to be less than 15% of the total number of members of the assembly (10% in the case of Delhi, which is a union territory with legislature).

Articles 102 and 191 also protect a legislator occupying a government position if the office in question has been made immune to disqualification by law.

[Extracted, with edits and revisions, from "Explained: Law on holding an 'Office of Profit', by Vibhor Relhan, *PRS Legislative Research*, <https://www.prsindia.org/theprsblog/explained-law-holding-%E2%80%98office-profit%E2%80%99>]

17.1 Nagraj is an MLA from the State of Karnataka, and belongs to the People's Party, which is in power in that state. Since Nagraj is also qualified as an engineer, he is often called upon to consult on various construction projects. On one such occasion, he was asked to provide some advice regarding the construction of a bridge by Bridgecraft Private Limited, a private company that worked on government contracts. Bridgecraft was building the bridge in a remote part of Karnataka, and was being paid by the government of Karnataka to build the bridge. Bridgecraft offered Nagraj a sum of Rs. 2 lakhs for his advice on how to build the bridge, which Nagraj accepted. Later, when Chinappa, an MLA from the rival Everybody's Party, found out about this, he complained to the EC about Nagraj, claiming that Nagraj had held an office of profit, and should be disqualified. Is Chinappa right?

- (a) Yes, since the bridge was being built for, and paid by, the state government.
- (b) No, since Nagraj was appointed and paid by Bridgecraft, a private company.
- (c) Yes, since the money that Nagraj received eventually came from the government.
- (d) No, since Nagraj had only provided advice about the bridge, and was not involved in its actual construction.

17.2 The bridge that Bridgecraft built was widely applauded as having been constructed in a very sound fashion; as a result, Nagraj's fame as an engineer also spread, and he was contacted by the government of the neighbouring state of Tamil Nadu to advise their Public Works Department in relation to the construction of a dam. Nagraj

travelled to Tamil Nadu, was given an office room to sit in, advised on the project, and received a token fee of Rs.5 for his advice (he did not wish to charge a high amount as the dam was being built to provide irrigation water to a very poor district). Chinappa hears about, and once again complains to the EC, saying that Nagraj should be disqualified since he had held an office of profit under the Government of Tamil Nadu. Will Chinappa's complaint succeed?

- (a) Yes, since Nagraj had provided advice to the Government of Tamil Nadu, and had received a fee in exchange for it.
- (b) No, since Nagraj had only taken a token fee of Rs.5 for his advice.
- (c) No, since Nagraj had not held an office for profit under the Government of Karnataka, the state from which he was an MLA.
- (d) Yes, since he should not have provided advice to the government of any state other than Karnataka.

17.3 Chinappa had been a state bus conductor many years ago; when he decided to enter politics, however, his career witnessed a meteoric rise, and he quickly became an MLA. However, Chinappa still had good relations with the employees in the Karnataka State Road Transport Corporation (the "KSRTC"), and followed its affairs closely. He was asked by the government of Karnataka to help them resolve some labour disputes at the KSRTC, which he did. When the state government offered to pay him for his services, he refused; the government, therefore, gave him a life-time free bus pass for use on all KSRTC buses as a gesture of their goodwill, which Chinappa accepted. Since Chinappa became an MLA, he had earned a lot of money, had his own car, and had stopped using buses; he did not, therefore use the bus pass at all. When Nagraj found out about this, however, he complained to the EC that Chinappa had held an office of profit under the state government, and that he should be disqualified. Will Nagraj succeed?

- (a) No, since Chinappa was only helping out the government of his state.
- (b) Yes, since Chinappa belonged to a party that was in power in the state of Karnataka.
- (c) No, since Chinappa never used the bus pass, and so, had not derived any advantage or benefit from the state government.
- (d) Yes, since Chinappa had received an advantage or benefit in the form of the bus pass.

17.4 Some years after the incidents described in the previous questions, elections are held in the state of Karnataka. Both, Nagraj and Chinappa, win their respective seats, and become MLAs in the newly constituted legislative assembly of Karnataka. The People's Party once again comes into power, and this time, Nagraj is appointed as the Minister for Public Works, and is responsible for overseeing all government construction activities in the state. Since he has to travel all over the state to discharge his duties, the government provides him a car and a driver, which he is permitted to use for his official work (all ministers are not provided this facility by the Government of Karnataka). Chinappa hears about this, and once more files a complaint with the EC,

saying Nagraj held an office for profit since he had been given a car and a driver, while other ministers had not. Will Chinappa succeed this time?

- (a) No, since Chinappa's party was not in power in the state.
- (b) Yes, since Nagraj should have used his own means of transport to travel across the state for his work.
- (c) No, since Nagraj was a minister, and had been provided the car and driver for use in his official work.
- (d) Yes, since all ministers were not provided an advantage or benefit in the form of a car or driver.

17.5 Some months after the incidents described in the previous question, there is a crisis in the state of Karnataka as several MLAs from the People's Party defected to Everybody's Party. A resolution was finally achieved when both parties agreed to come together to form a coalition government in the state. Since MLAs from both parties had to be kept happy, the new Chief Minister, Gowda, decided to appoint 33 ministers to her cabinet, with roughly an equal number from each of the two parties. Sanjeevini, a journalist who covered political news, complained to the EC, saying that this violated the Constitutional limit on how many ministers could be appointed in Karnataka, which only has 224 seats in its legislative assembly (224 MLAs were appointed to the assembly after the latest elections, i.e, all seats were filled). Will she succeed?

- (a) No, since 33 ministers is less than 15% of the total strength of the Karnataka legislative assembly.
- (b) Yes, since, along with the Chief Minister, the total number of ministers exceed the limit prescribed under the Constitution.
- (c) No, since she is a journalist, and only MLAs may complain to the EC under this law.
- (d) Yes, since fresh elections should have been held rather than allowing a coalition government in the state.

Consumers can cheer as the *Consumer Protection Act, 2019* (the "CPA") has recently replaced the three-decade old *Consumer Protection Act, 1986*. Under the CPA, a consumer (that is, anyone who has bought a good or a service), can file a complaint against the seller or provider of the goods or services if there is any deficiency in the goods or services.

One crucial change is that now the money spent on buying the product will determine the value of the case as opposed to the previous parameter of the Maximum Retail Price ("MRP") of the purchased goods/service. "Say something is bought on discount, it's only fair that the amount the consumer has paid is the determiner in place of the MRP," says the expert.

In another change, the CPA allows consumers to file their complaint with a consumer court from anywhere. This comes as a big relief as earlier they were required to file complaint in the area where the seller or service provider was located. This is a fitting move considering the rise in e-commerce purchases, where the seller could be located anywhere.

The CPA has provisions for product liability under which a manufacturer or a service provider has to compensate a consumer if their good/service causes injury or loss to the consumer due to manufacturing defect or poor service. For instance, if a pressure cooker explodes due to a manufacturing defect and harms the consumer, the manufacturer is liable to compensate the consumer for the injury.

E-commerce will now be governed by all the laws that apply to direct selling. The CPA says that platforms like Amazon, Flipkart, Snapdeal etc. will have to disclose sellers' details, such as their address, website, email, etc and other conditions related to refund, exchange, terms of contract and warranty on their website to increase transparency. The responsibility of ensuring that no counterfeit products are sold on these platforms will also with the e-commerce companies.

[Extracted, with edits and revisions, from "Here's how consumers will benefit under the new Consumer Protection Act", by Shipra Singh, *The Economic Times*, <https://m.economictimes.com/wealth/spend/heres-how-consumers-will-benefit-under-the-new-consumer-protection-act/articleshow/70711304.cms>]

18.1 Arbaz bought a laptop from an online e-commerce website; the laptop was delivered to him within the time promised on the website, and also matched all the specifications that had been listed on the website. However, Arbaz realises that the laptop is not powerful enough for his work, and he wishes to return the laptop. The company that runs the e-commerce website, "Brahmaputra", however, refuses to accept the return of the laptop – they say that their policies do not permit any returns of refunds. Upset at this, Arbaz files a complaint against Brahmaputra in the district consumer court in his area. Will he succeed?

- (a) Yes, since the CPA permits a customer to file a complaint against a seller from anywhere.
- (b) No, since the laptop was delivered on time and matched the specifications listed on the website.
- (c) Yes, since the laptop was of no use to Arbaz as it was not powerful enough for his work.
- (d) No, since Arbaz should try and sell the laptop to another person if it was not sufficient for his purposes.

18.2 Arbaz bought another laptop from Brahmaputra's website; this time, he chose a more powerful laptop, manufactured by Orange, a premium electronic goods manufacturer, and Brahmaputra again delivered the chosen laptop within the time promised. One day while Arbaz was working on the laptop, there were sudden, massive voltage fluctuations in the electricity supply to his house, and the laptop, which was plugged into a wall socket for charging, caught fire. Arbaz suffered some minor burns on his fingers, and he decided to file a complaint against Brahmaputra for compensation in the district consumer court located in the area where Brahmaputra's head office was located. Will Arbaz succeed?

- (a) Yes, since Brahmaputra's poor service had caused the harm to Arbaz.
- (b) Yes, since Arbaz suffered an injury to his fingers, and so, was entitled to compensation.

- (c) No, since Arbaz can only file such a complaint for compensation against the manufacturer of the laptop, and not against Brahmaputra.
- (d) No, since Arbaz should have filed the complaint with the consumer court located in the area where he stayed.

18.3 Once he recovers from his injuries, Arbaz buys a phone manufactured by Orange from Brahmaputra's website. One day, he was talking on the phone with someone; after talking for about 40 minutes, the phone suddenly overheated and its battery exploded, causing severe burns to Arbaz's ear. On examining the phone, it turned out that the battery overheated and exploded because it had not been fitted properly into the phone's body. Arbaz now files a complaint in the consumer court in his area against Orange. Will Arbaz succeed?

- (a) No, since Orange is not an Indian company.
- (b) Yes, since Arbaz had suffered an injury because of a manufacturing defect in the phone.
- (c) Yes, since this was the second product from Orange with which Arbaz had had to face problems.
- (d) No, since Arbaz should not have been talking for so long on the phone in the first place.

18.4 Since he had had so much trouble with all the things he bought from Brahmaputra's website, Arbaz decided to switch to another e-commerce website, Slipmart. Slipmart's advertising slogan, which is displayed all over their website, is "We aim to please". Happy at seeing this slogan, Arbaz bought a book from Slipmart's website. Arbaz received the book, but did not enjoy reading it. He therefore filed a complaint against Slipmart in the consumer court, claiming that since Slipmart had not 'pleased' him, they had failed to live up to their advertising slogan, and had therefore committed a deficiency in service. Will he succeed?

- (a) No, since Arbaz not enjoying the book did not amount to a deficiency in service on Slipmart's part.
- (b) No, since Slipmart was not in the business of selling books.
- (c) Yes, since Slipmart had not lived up to its advertising slogan.
- (d) Yes, since Slipmart should have known Arbaz's preferences before selling him the book.

18.5 Arbaz decided to give Slipmart another chance, and ordered a box of expensive foreign chocolates from their website. The chocolates were delivered on time, but when Arbaz ate them, he fell sick; it later turned out that the chocolates were counterfeit. Arbaz decided to file a complaint against Slipmart in the local consumer court, and asked that Slipmart compensate him. Slipmart claims that Arbaz should file the complaint against the manufacturer of the chocolates, and not against them. Will Slipmart succeed?

- (a) Yes, since Slipmart had delivered the chocolates on time.
- (b) Yes, since the manufacturer of the chocolates were at fault, and not Slipmart.
- (c) No, since under the CPA, the responsibility of ensuring no counterfeit products were sold on their website was Slipmart's.
- (d) No, since it was Arbaz's responsibility to check that the chocolates were genuine before eating them.

