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Student Essays

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Introduction

The Centre for Law and Policy Research (CLPR) in collaboration with its partnered Indian and U.S. law universities, organised a series of cutting-edge workshops on U.S.-India comparative constitutional law between October 2021 and January 2022. An essay competition was folded into the workshops which gave students the opportunity to apply their learnings to an essay prompt and the added incentive of winning prize money and attending the closing ceremony of the project. The top 2 essayists from each workshop were invited to the closing ceremony that was clubbed with the world premiere of a theatre production event AAEEN staged in April 2022. The students were handed over the certificates and prizes at the ceremony and interacted with the CLPR and United States Consulate General Chennai officials. They were also given passes to watch the theatre production. This publication complies the top 8 essays judged by a panel of constitutional experts. We hope that this publication encourages more students in India and abroad to think deeply about U.S.-India comparative constitutional law in ways that sustain and protect constitutional democracy across the world.

Question 1: Is studying U.S. Constitutional history and practice useful in understanding contemporary constitutional developments in India?

1. K. Hari Govind Menon- The National University of Advanced Legal Studies, Kochi (Awarded the Second Prize)

The origins of constitutions undoubtedly have much to do with the social and cultural background as well as history of a nation. The U.S and Indian constitutions are foundational documents that command much respect; the former being one of the earliest democratic constitutions of the modern world, and the latter being one of the largest constitutions forming the groundwork for the largest democracy in the world today. As a product of the mid-20th century, when colonised states across the world had begun to shed their shackles from imperial rule, our Constitution was unquestionably inspired by other stalwart entities from across the world, including the United States.

Contemporary developments in a country often mirror international movements or changes in outlooks. The beauty of a foundational document such as the Indian Constitution is its incredible capacity to adapt and mould itself according to the changing views of the Indian public, while simultaneously maintaining its inherent integrity. This allows it to quite literally adopt the metaphorical "living tree" concept, where the Constitution reflects the shift in opinion and views, while being robust and originalist with regard to its foundational features integral to it continuing as an unshakeable conscience of the country, as well as a reflection of its most ideal aspirations. Though self-contained in this manner, to understand and fully appreciate contemporary constitutional developments in India, a comparison to other texts that deeply inspired it, such as the US Constitution, would shed much light on the process and the reasons for the changes.

The Constitution of India—a document created after more than two years of intense discussion and deliberation, is the extract of the best beliefs and opinions that the many luminaries of the Constituent Assembly held. The concepts which formed the basis of many of its hallmark provisions, such as the Unitary federal system, the fundamental rights and others, were inspired from constitutional developments elsewhere, where the socio-cultural scenario demanded the creation of such provisions. Similarly, despite the drastic difference in the social scenarios and times, the US Constitution was very much an influence on the Indian one.

A reading of the Constituent Assembly debates is a testament to how deeply the founding fathers discussed concepts inspired off of the American Constitution, such as the separation of powers. But this reading also lets the reader in on another fact—that the adoption of provisions or concepts from other constitutions, including the American Constitution, were not blind or unaltered borrowings. Each of these provisions were dissected and analysed elaborately in the light of the peculiar realities of the Indian experience. For instance, the separation of powers, though included in the Indian constitutional framework, was not as stark of a division as that in the United States, with Ambedkar preferring to choose a middle ground. In some aspects, this reflects the views of Madison in the US, but the Indian version of the concept was not a duplication of his arguments and views, but tailored according to the needs of India.

That being said, an appreciation of constitutional developments in India could be aided by comparisons to the US. This is because though these two great democracies had differing starting points, they are both based on similar democratic and egalitarian ideals. Global changes in politico-legal system, as mentioned above, often mirror contemporary international developments. For

instance, the views on obscenity in both nations might differ, but despite being separated by a few decades, the jurisprudence on obscenity in literature have shown tendencies to largely stride on the same ground. The similarity in the decisions of the *American Grove Press v. Gerstein* and the Indian *Perumal Murugan v. Union of India* are testaments that gradual changes in cultural views are shared global views, and often are inspired from similar developments elsewhere.

A true appreciation of the constitutional system of our nation and its contemporary developments may thus be aided by a comparison to the history of a constitution as influential and noteworthy as the US, for democratic ideals are not the sole preserve of one nation alone, and tends to influence others. However, this study must not exceed comparison and scrutiny, as both constitutions, as well as others around the world, are designed keeping in mind the social and cultural soul of the nation. A comparative study is intended to assist in understanding. True appreciation comes from recognising the uniqueness of one's own national identity, as constitutions are unadulterated reflections of its highest form.

2. Nishasri S- The Tamil Nadu Dr. Ambedkar Law University, Chennai (Awarded the Third Prize)

The thought of drafting an indigenous constitution for the Indians by Indians itself is an inspiration from that of U.S. For Nehru and Gandhi, the example of U.S. drafting its own constitutional rights after its independence was very strong. Soon after the declaration of Poorna Swaraj in 1930, which can be considered as an equivalent to Declaration of Independence 1776 of U.S, every Indian decided not to compromise in attaining a complete independence and the great minds of India believed indigenous constitution is the first right step towards it. Thus, the question of whether or not studying U.S constitution history and practice is useful in understanding contemporary constitutional developments in India absolutely gets a positive answer—Yes!

Since the drafting of Constitution, constitutional history of U.S. has made a significant impact on the Indian constitution. One such fine example is whether to use the phrase 'due process of law' or 'procedure established by law'. Dr. B.N. Rau, the constitutional advisor met justice Felix Frankfurter. Frankfurter warned Rau that the due process would be undemocratic and would put unwarranted burden upon the judiciary. Article 21 of the Indian Constitution[1] now uses 'procedure established by law'. We would be also able to analyze the similarity in drafting of constitution in both nations, it has been democratic and transparent.

India had adopted the fundamental rights from the Bill of Rights of the U.S.[2] However, the UDHR also has its own impact on India's fundamental rights. The concept of Judicial review was adopted by the Judiciary of India and this doctrine was first given in the case of *Marbury v. Madison*[3] and thereby it had opened a Pandora box in the legal system of India. The *Kesavananda Bharti* case[4] purported doctrine of basic structure for the very first time, and fundamental right is a part of basic structure. In the case, *Indira Gandhi v. Raj Narain*[5], the Supreme Court of India upheld that judicial review is a part of this doctrine. In *Brij Bhushan v. State of Delhi*,[6] the Court opined that Fundamental Right, the "freedom of speech and expression" has been taken from the 1st Amendment Act of the U.S. Impeachment of President[7] and removal of judges from Supreme Court and High Court[8] is a reflection from the Legal framework of U.S.

While we compare the legal systems of these nations we get to know about certain striking features, U.S follows a Presidential form the position and powers of the President there is powerful and wide. Whereas, in India President only acts a Head of Executive and is obligated to go by the words of Council of ministers. The federal structure in U.S. has allowed real autonomy and supremacy to the states, but in India since it is a cooperative federalism the residuary and ultimate power reside in the hands of centre however the states have been with limited powers which would be enough to govern their regional needs. We could also find the similar doctrines such as the

[1] Article 21 Protection of Life and Liberty, Indian constitution, 1950.
[2] Bill of Rights of U.S 1791.
[3] 5 U.S. 137 (1803).
[4] Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr. (1973) 4 SCC 225.
[5] 1975 AIR 1590 1975 SCC (2) 159.
[6] 1950 AIR 129.
[7] Article 61 of the Indian Constitution, 1950.
[8] Article 124(4) of Indian Constitution, 1950 and Judges Inquiry Act of 1968.

separation of power and the principle of checks and balances in these legal systems. Both, Dr. B.R. Ambedkar and James Madison have advocated these doctrines to ensure there is no overreach of power by any organ of government.

In regard with the affirmative action, though India validates the use of reservations, a parallel can be drawn with the *Bakke* case[9] and the *Champakam Dorairajan* case[10]. Recently, the Supreme Court of India in the case, *Patan Jamal Vali v. State of Andhra Pradesh*[11] had acknowledged and tried to incorporate the principle of intersectional discrimination. This principle had already got signification traction in U.S

Hence, it is very much on the fact that, studying U.S. constitutional Law history and practice is useful in understanding the contemporary constitutional developments in India because, the legal system of India itself has significant inspiration from that of what it is in U.S. Thus, in order to understand the text of constitution, to analyze the evolution of legal system in India or to even know about the trajectory of legal fraternity in India one must have a basic understanding in the constitutional history of U.S.

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[9] Regents of Univ. of California v. Bakke, 438 U.S. 265 (1978).
[10] State of Madras v. Champakam Dorairajan AIR 1951 SC 226.
[11] Patan Jamal Vali v. The State of Andhra Pradesh on 27 April, 2021.

4. Sanjan Rebecca J- School of Law, Christ University, Bangalore

Undoubtedly, the constitutional lessons footprinted by the U.S constitutional making process inspired the Indian Constitution in a plethora of ways. The Indian constitution makers were able to dissect the socio-political essence laid down by the U.S Constitution and supplement the same with the Indian scenario. In terms of representation in the Indian Constituent Assembly, it can be said that India had much to learn from the U.S composition of aristocratic white men (considering that slavery was still widely prevalent in the U.S). Notably, the composition and selection for the Indian Constituent Assembly might not have been entirely democratic but was much more prominent in the Indian sense because of the diverse umbrella of representation existing under the INC as well as the popular backing of leaders including women.

The differential method of deliberation evidenced in the Constituent Assembly debates, that is, bargaining applicability of principles to the Indian cause was only possible by adopting the U.S constitutional example. For instance, equal protection before the law introduced by the U.S 14th Amendment was vital in determining the principle of equality under Article 14 of the Constitution of India, 1950. The U.S federal character served as building blocks for the Indian federal structure—strong centre with autonomy to states. The Indian constitution makers understood that increased autonomy to States would not work out favourably in the Indian scenario and might lead to disintegration of the Union.

Adopting the U.S "Bill of Rights" enabled India to incorporate into its Constitution socio-political rights that cannot be denied to any of its citizens such as freedom of speech & expression, right to life & liberty etc. However, I would point out that the Indian Constitution was able to borrow these rights succinctly while understanding that appending reasonable restrictions to these rights was necessary for maintaining their sanctity.

Article 21 under the Indian Constitution mirrors the U.S right, except for the addition of the word, 'personal' in the Indian context which notes that 'personal rights' are for the individual and indicate free will. One of the major issues faced by the Indian constitution makers was deciding between the terms 'due process' and 'procedure established by law', it is interesting to note that words that are exceedingly similar could hold distinct contextual meaning. While Dr. B.R Ambedkar advocated for due process owing to the 'check and balance system' objectively envisaged in the nascent stage, procedure established by law was inserted as it seemed to fit into the Indian puzzle. Two reasons provided by Dr. Ambedkar which I find most fascinating is, firstly whether the legislature can be trusted to make only good laws as the legislature is likely to err in its law-making, and secondly the relationship between the legislature and judiciary where the judiciary can decide whether law was good or bad law.

The role of the judiciary is much more prominent in the U.S due process, bearing in mind that deprivation of life or liberty cannot happen without due process—there should be existing procedure to allow for these inherent rights to be threatened. It must be noted how the judiciary's role might serve better in deciding the soundness of law. In India, judicial review was later adopted into the Constitution which ensures that the law or executive actions can be struck down as unconstitutional if they violate the basic structure of the constitution. The addition of judicial

review as well as the fundamental rights in the Indian Constitution owes its origins to the U.S. Without the U.S constitutional influence and discussion, the Indian Constitution would not live up to its grandeur of flexibility. Learning from U.S mistakes and tailor-fitting relevant provisions to the Indian constitutional skeleton ultimately opened up room for much debate and the smooth functioning of democratic decision making in the formation of the Constitution of India.

5. Tushitta Murali- The Tamil Nadu National Law University, Tiruchirappally

History of the Indian and U.S. Constitutions

The Indian quasi federalist state is not similar to the federal nature of the United States that is, the manner in which the Constitution of these countries was formed were quite different. This extends to the two countries' history has a remanent of British Rule and the background in which the respective Constitutions were framed. While in India unification under a single banner was seen as an important step in fortifying our country, given the troubled times under which independence was gained and the Constitution was formed. The US on the other hand decided to give autonomy to the states and allowed them to decide the best course of action for their respective states. It is interesting to think if this is in fact, a functioning model of the 'Consent or Leave' model under Reformist Consent theory or if it has unknowingly been inspired by the model. Maybe the presence of a National Constitution would be the practical but not ideal method of keeping this model in check.

Although these constitutions are a product of their times, the minds that worked on it and more importantly the need of the hour at the time of formation, a comparison is helpful in understanding how constitutions are drafted. Let us begin by accepting that neither constitution was democratically drafted. Citizens from all walks of life irrespective of caste, gender and colour were not involved in the process. This means that the drafters were affluent, influential and lived in a world that already served their best interests. The Constitution exists to not only chart a course to being the nation back on path after devastating wars but to also ensure that civil and political liberties are guaranteed and enforceable in circumstances of breach.

Recent Indian Constitutional Developments

The Constitutions as we know them today have undergone a series of changes over the years, to accommodate both explicit and implied rights within them, and have done away with provisions that no longer serve the needs of the society. Both have allowed for flexibility and have therefore endured the test of time.

Recent constitutional developments in India have been focused on understanding the needs of the society (decriminalization cases) and being amenable to those needs in order to stray away from breakdowns. They have also focused on including various implied rights under the ambit of certain explicit rights (*Puttaswamy* judgement) so that the purpose of inclusion of the explicit right in the Constitution may be fulfilled. The Right to be Forgotten and the Data Protection Bill, 2019 have also emerged as contentious agendas that require detailed deliberation and careful suggestions in order to give scope yet narrow it down so that the constitutional principle of the separation of powers is maintained and the fundamental rights are protected.

Constitutional History—A tool for efficiency?

U.S constitutional history and developments are helpful in understanding the manner in which the U.S Supreme Court has aided the evolution of the Constitution. Judicial developments play a pivotal role in giving full meaning to any statute, it enables the judges to interpret and ascertain the

intent of the law makers and give suitable remedy or an accepted interpretation in accordance with the enumerated rights. This gives rise to the concept of constitutional morality which helps future judges in determining the permissible limits under which they are authorised to function.

The US Constitution has, over time, paved the way to allow for these civil liberties to have primacy and has allowed for an efficient society to develop. Although this is intended to do away with discrimination, reality is far from it. Alas, no system is perfect and is inherent with beliefs of time immemorial.

The Indian system is currently going through a period of transformation. At this moment, the judges need to find persuasive values in cases from foreign jurisdictions in order to reach a conclusion that may further the principles of the Indian Constitution and also act as a pillar in this strained time. In this tedious period, it becomes important to consider the developments in the US or rather the ratio and obiter of these judgements to act as a guide in these uncertain times. The Indian Constitution is flexible and allows for one to work within its framework but the cases at the doors of the Supreme Court presently, require more than just a flexible Constitution, it requires the support of foreign jurisdictions in deciding these cases that have ramifications that are quite possibly irreversible. Therefore, the study on US constitutional history is indispensable in dealing with the contemporary constitutional developments in India.

6. Mekha Vijayakumar- The National University of Advanced Legal Studies, Kochi

"If we lay a strong enough foundation, we'll pass it on to you…"
- Hamilton: An American Musical, 2015

When American playwright Lin-Manuel Miranda created a Broadway musical on one of the Founding Fathers of the United States of America, few could predict the popularity it gained among the masses. While criticisms on factual accuracy abound (then again, when has the simple narrative taught in history classes been keen on that aspect?) the level of sensationalism it reached was beyond imagination. The reason could lie in the catchy lyrics, phenomenal acting and the like, but the worldwide appeal also inarguably lies in its ability to guide the viewer in understanding the background in which the free and independent United States came into being. And why did that matter? Perhaps this led the unknowing viewer to value the institutions that were formed by the tireless efforts of many, or perhaps it led them to understand the dreams and visions of the Founding Fathers.

In the over-simplified review of a musical lies the answer to the question posed, albeit partially. The study of U.S. Constitutional history and practice, much like any field of inquiry, is constantly evolving and complex. The very history behind the adoption of the U.S. Constitution is one fraught with conflicts, abstention and agreements. Having gained independence from tyranny, it was only natural that the first instinct of the leaders of the liberated nation was to avoid tyranny at all costs. However, it was not long before it was realized that "a divided House cannot stand" and union was necessary. Following the Philadelphia Convention in 1789, the matter of representation was resolved—each State was to be proportionally represented in the lower house (as per population) and equally represented in the Senate, or upper house. The question of ensuring that one body did not have overarching influence over the others was addressed in Madison's Federalist Paper No. 51 were the advantages of implementing the 'separation of powers' doctrine; whereby the judiciary, executive and legislature are independent of each other while also acting as the check and balance for the others. The former detailing on the U.S. Constitutional history and the latter summarizing of its practice assumes relevance here when one realizes that these two aspects are incorporated in the Indian Constitutional history and practice.

Not only has it been restricted to the past of India, but it also influences the present. The degree may have been diluted due to the varied cultural differences, as can be seen with the protections on the freedom of speech. While one protects even "fighting words" that does not inflict direct harm (*R.A.V v. City of St. Paul*), the other criminalizes any that might affect public order. Yet, both allow for the progress of literary and artistic work subject to the community standards test (see, *Grove Press v. Gerstein; Perumal Murugan v. The State of Tamil Nadu*). Both derive from the constitutional history of its own, but it cannot be denied that the constitutional history and practice of the oldest democracy has influenced the history of the largest one.

7. Vibha Shyam Sekar- The Tamil Nadu Dr. Ambedkar Law University, Chennai

It is of general consensus that the "Constitution without judicial review is unconstitutional". This quintessential feature enshrined in the Indian Constitution was borrowed from its American counterpart. American constitutional history has thus influenced the Indian Constitution-making process. In a similar vein, Madison's "Bill of Rights" containing freedom of speech, religion, press, right to assemble peaceably, etc. as discussed in "Excerpts on Making of the U.S. Constitution", also seem to have influenced the Fundamental Rights encapsulated in Part III of the Constitution of India. The "equal protection of laws" as guaranteed under Article 1 of the 14th Amendment to the Constitution of the United States is another such prominent right that is reflected in the Indian Constitution. India also adopted features such as the independence of judiciary and removal of High Court and Supreme Court judges from the American Constitution.

However, an important aspect of the Indian Constitution dealing with affirmative action is found to be missing in the American Constitution. While the India has in place a system of reservations to mobilise historically disadvantaged classes of people, the U.S. makes no such clear attempt to work towards the welfare of the historically discriminated groups in its country.

From Elizabeth Anderson's book, "The Imperative of Integration", it is understood that there are four methods of affirmative action—to compensate Black people for past harms, to generate diversity, to prevent discrimination, and to achieve integration. Although the Civil Rights Act of 1964 does state that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance", while perusing the landmark case of *Regents of the University of California v. Bakke*, one would observe that it is permitted for race to be one of the factors to take into consideration in a college's admission policy. However, till date, an explicit reservation of seats in the form of quotas for people belonging to historically oppressed groups, as seen in India, is unconstitutional in the United State of America.

On the other hand, the Indian landmark case of Indra Sawhney & Others v. Union of India elaborated that both economic background as well as the caste system need to be considered while identifying backward classes. However, it also laid down the concept of a "creamy layer" which led to the exclusion of people belonging to this layer from the bracket of backward classes. Furthermore, reservations were limited to initial appointments and were not applicable to promotions and, emulating the views of Dr. B.R. Ambedkar, it was advised that 50% should be the cap on the total reservations so as to not "nullify the main rule of equality".

In conclusion, it can be observed that the Constitution of India has better mobilised the downtrodden and historically oppressed groups of citizens by actively utilising the appropriate Constitutional features. While the Indian Constitution seeks to remove poverty and inequality, the American Constitution seems to work more along the lines of removal of "effects" and not the "causes". However, it is abundantly clear that neither country has reached a stage where it can be claimed that the historic injustice faced by certain groups of people have been completely

compensated for, and although such a day when the need for affirmative action no longer exists would indeed be a monumental day worth celebrating, it is still quite a long way away. On the bright side, the fact that discussions around race and caste-based discrimination are observed in common backdrops and are no longer limited to the ivory towers of academia suggests that we, as a group, are undergoing a commemorative awakening with a promise of a bright future ahead.

Question 2: How should legislative and executive power be distributed between the Centre and the States to respond to a virulent pandemic?

8. Yashvardhan Singh- The National Law School of India University, Bangalore

(Awarded the First Prize)

The challenges thrown at mankind by the COVID-19 pandemic have been unprecedented. In some way it has forced us to better cooperate and channelise the limited resources available at our disposal. In this context, the need for cooperation between different levels of government as much as general civil society have assumed critical significance. Therefore, the point I am trying to establish is that whatever maybe the mode of power sharing between the Centre and the States, the need to share that power is absolutely crucial. Furthermore, when the size and population of the nation is huge, the percolation of benefits and government intervention till the last mile and the last person becomes difficult. Especially in those cases, where there is lack of decentralisation and devolution of governmental powers. There have been numerous instances during the pandemic that have shown that local levels of institutions including resident welfare associations, housing societies, self-help groups in urban areas and panchayats and sub-panchayats, *mahila morchas, gramin morchas*, etc in the rural areas have risen to the occasion and provided services and assistance during the pandemic induced lockdowns. Hence, the pandemic crisis has shifted our focus on the need to have greater distribution and sharing of power.

After establishing why power needs to be distributed at different levels of government, the question of how it should be distributed becomes easier to address. At a constitutional level, this sharing of authority can be done in three ways. Firstly, there can be a situation where the policy is determined at the national level and is also executed by national level agencies. This model requires power to legislate on pandemic type situations to rest with the national parliament. The execution also be done primarily by the national level agencies like the National Disaster Management Authority in the Indian case. The benefit of this setup is that it allows the country to have a nationally coordinated strategy to manage the situation, and the best resources available can be deployed. Additionally, it is not feasible that each of the states have specialised agencies which can carry out sophisticated tasks like sequencing of genomes, research on vaccines, drugs and other testing mechanisms. Therefore, having a national level policy helps integrate resources and provide to different regions the best science and research to deal with the pandemic. The one downside of this model is that it is not bottoms up planning and can misses the specific needs of citizens that are peculiar to a region.

The second model of power sharing is that both the enactment of statutes and the execution of policy, both are done at the level of states. This model allows the state machinery to assume a more proactive role in terms of handling the situation. In this model while the centre can aid and assist the states as per their specific needs, the state administration can themselves determine the requirements of its people. Further the advantage of this system is that as the government gets closer to people, the understanding of local contexts becomes sharper. Additionally, because the local bodies like municipal corporations and zila parishads are generally regulated by the State governments, they can be deployed by the state agencies accordingly. The downside of this model is that coordination among different states may suffer as each state in some way is battling its own fight with the pandemic and may take protectionist measures like keeping its border sealed or expressing other forms of excessive state sovereignty, like hoarding of critical supplies.

The third model that is perhaps most suited to such a situation is that the law and policy to deal with the pandemic is developed at the national level. This however, should be done with the broadest level of deliberations that are feasible. Secondly, the roadmap that emerges should be executed by both the centre and the state in a cooperative fashion, with states having more role in the interiors of the country and the central agencies having more of a general mandate, like keeping track of new researches and emerging trends. This model will help address the twin challenges of

reaching the last mile as well as being globally connected and updated. This model also provides for greater flexibility in terms of interacting among different levels of government and thus provides all hands-on deck, leading to greater participation.

In conclusion it is very difficult to argue with certainty what model of legislative and executive power sharing will work in a country. The needs are contextual and so should be the model of governance. Lastly, in a democratic setup people expect that their institutions of governance should respond to their needs and thus a policy response needs to be designed where different stakeholders become part of the process and the solutions.

9. Bodhisattwa Som- The National Law School of India University, Bangalore

The ongoing pandemic has had devastating effects on populations all around the world and continues to pose challenges to healthcare systems. For once, the world was confronted with a virulent foe which spread faster than the mushrooming of populist right wing majoritarian governments. The impact of the virus not only affected a large number of human lives but also posed a dilemma to present conceptions of distribution of legislative and executive powers. The pandemic has posed questions to how political power must be distributed between the Centre and States, and has primarily led to questions about tipping the scales of balance of powers between the Legislature and Executive within a particular state. I shall address this issue first. The pandemic perhaps gave a license or a free hand for the Executive to assume power and play a major role in decision making, sidelining parliamentary processes. However, it is necessary for Parliaments of countries to realize that such free handedness given to the Executive does not turn into iron a fisted decision-making process. While the executive is expected to be prompt in making decisions to tackle such a precarious situation, the value of debate in decision making is poignant to the democratic system.

Therefore, it becomes increasingly necessary that the virtue of parliamentary oversight is not forgotten. Parliaments in some parts of the world have effectively been able to carry out the duty of oversight, prioritizing mechanisms that appear strategic and logistically feasible.[12] The other problem plaguing governments around the world, as Professor Mark Tushnet in his talk, identified is what is the fact that systems of majoritarian governments all around the world continue to persist, and these governments internalize, actualize, grow and perpetuate executive high handedness in decision making. The diminishing noises of the opposition in the Parliament may exacerbate either political instability or greater consolidation of power at the hands of the ruling government. Therefore, the scrutinizing role of Legislatures coupled with the decision-making powers of the Courts can help in controlling the impulses of imposing Emergency measures abruptly by the Executive during these troubled times.[13]

The other challenge, as identified earlier, is the distribution of Executive and Legislative powers between the Centre and States. The worst effected segment of the society has been its less fortunate segments. The lack of proper healthcare at the local level has led to cases where in a country such as India, more people have died, not due to a COVID infection but due to the failing medical system at the local level. Therefore, it becomes primarily important that subjects such States are given greater aid in order to tackle such situations. Since health is a State subject in India, the role of the Central Government becomes secondary in this case and is limited to coordination among the states, having some minimum oversight and provision of immediate essential supplies to states in dire need of them. The Centre can aid the States in the creation of temporary healthcare centers for isolation and testing. I believe that the Centre's role during a pandemic would be to heed to the advice of medical professionals on how the pandemic will continue to shape and

[12] Elena Griglio, 'Parliamentary Oversight Under the Covid-19 Emergency: Striving Against Executive Dominance' (2020) The Theory and Practice of Legislation, doi:10.1080/20508840.2020.1789935.
[13] Jan Petrov, 'The COVID-19 Emergency in the Age of Executive Aggrandizement: What Role for Legislative and Judicial Checks?' (2020) The Theory and Practice of Legislation, doi:10.1080/20508840.2020.1788232.

formulate broad policies to meet future challenges. The Centre will play a bigger role in formulating economic packages for supporting families who have lost either their lives or their livelihoods during the Pandemic and making sure that more people are not pushed into the deeper holes of poverty. Therefore, greater decentralization of Legislative and Executive power continues to be the need of the hour in order to tackle the pandemic.