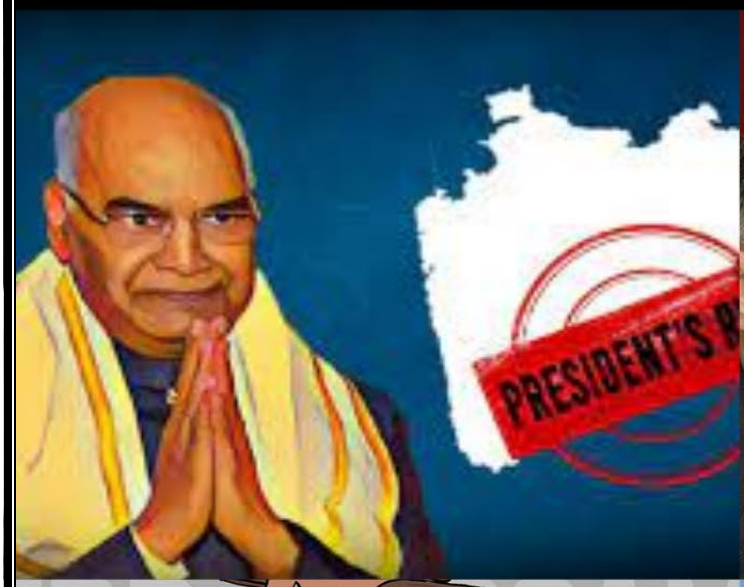
LEGAL AFFAIRS

MOST IMPORTANT (LAST 6 MONTHS)



#PRESIDENT'S RULE IMPOSED IN PUDUCHERRY

President's Rule has been imposed in the Union Territory of Puducherry, on the recommendation of the Lieutenant Governor, after the established government lost power during **a vote of confidence.**

- The President was satisfied that a situation had arisen in which the administration of the Union Territory of Puducherry could not carry on in accordance with the provisions of the **Government of Union Territories Act, 1963** (20 of 1963).

Administration of Union Territories:

- **Article 239 to 242 under Part VIII** of the Indian Constitution deals with the administration of **Union Territories.**
- Every union territory is **administered by the President acting through an administrator** appointed by him.
- An **administrator** of a union territory is an agent of the President and not head of state like a governor.
- The President can specify the designation of an administrator; it may be **Lieutenant Governor** or Chief Commissioner or Administrator.
- The **Union Territories of Puducherry (in 1963), Delhi (in 1992) and Jammu and Kashmir (in 2019)** are provided with a legislative assembly and a council of ministers headed by a chief minister.
- But, the establishment of such institutions in the union territories **does not diminish the supreme control of the President** and Parliament over them.
- The **Parliament can make laws on any subject of the three lists** (including the State List) for the union territories.

Provision in Case of Failure of Constitutional Machinery (as per the 1963 Act):

- **If the** President, on receipt of a report from the Administrator **of (the Union territory)** or otherwise, **is satisfied,—**
- **that a situation has arisen in which the** administration of the Union territory cannot be carried on **in accordance with the provisions of this Act, or**
- **that** for the proper administration of the Union territory **it is necessary or expedient so to do,**
- **The President may,** by order, suspend the operation of all or any of the provisions of this Act **for such period as he thinks fit, and**
- **Make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the Union territory** in accordance with the provisions of Article 239.

President's Rule in a State:

- President's Rule **implies the suspension of a state government and the imposition of direct rule of the Centre.**
- It is also known as **'State Emergency' or 'Constitutional Emergency'.**

Constitutional Provisions:

- The President's Rule is **imposed through the invocation of Article 356 of the Constitution** by the President on the advice of the Union Council of Ministers.
- Under Article 356, President's Rule is imposed if the President, upon receipt of the report from the Governor of the State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution.
- **Parliamentary Approval and Duration:**
- **Parliament within two months** from the date of its issue.
- The approval **takes place through simple majority** in either House, that is, a majority of the members of the House present and voting.
- **Initially valid for six months**, the President's Rule **can be extended for a maximum period of three years** with the approval of the Parliament, every six months.

Consequences of President's Rule:

- The state governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President.
- The President can declare that the powers of the state legislature are to be exercised by the Parliament.
- The President either suspends or dissolves the state legislative assembly.
- **Revocation:** A proclamation of President's Rule **may be revoked by the President at any time** by a subsequent proclamation. Such a proclamation **does not require parliamentary approval.**
- This happens, in case, the leader of a party produces letters of support from a majority of members of the Assembly, and stakes his claim to form a government.

Recommendations/Judgments on President's Rule

- **The Administrative Reforms Commission (1968)** recommended that the report of the governor regarding the President's rule has to be objective and also the governor should exercise his own judgment in this regard.
- The **Rajamannar Committee (1971)** recommended the deletion of Articles 356 and 357 from the Constitution of India. The necessary provisions for safeguards against arbitrary action of the ruling party at the Centre under Article 356 should be incorporated in the Constitution.
- **The Sarkaria Commission (1988)** recommended that Article 356 should be used in very rare cases when it becomes unavoidable to restore the breakdown of constitutional machinery in the State.
- **S.R. Bommai Judgment (1994):** The Supreme Court enlisted the situations where the exercise of power under Article 356 could be proper.
- One such situation is that of 'Hung Assembly', i.e. where after general elections to the assembly, no party secures a majority.
- **Justice V.Chelliah Commission (2002)** recommended that Article 356 must be used sparingly and only as a remedy of the last resort after exhausting all actions under Articles 256, 257 and 355.
- The **Punchhi commission (2007)** recommended that these Articles 355 & 356 be amended. It sought to protect the interests of the States by trying to curb their misuse by the Centre.

#CENTRE V. TWITTER CONTROVERSY

Recently, the **government of India reprimanded Twitter (micro-blogging website) for not complying with its order to block more than a thousand accounts** for alleged spread of provocative content and misinformation on the **farmers' protest.**

Current Issue:

- The **Centre has issued notice to the micro-blogging site after it restored more than 250 accounts** that had been suspended earlier on the government's 'legal demand'.
- The government wants the platform (Twitter) to comply with its earlier order of **31st January, 2021** by which it was **asked to block accounts** and a controversial hashtag that spoke of an impending 'genocide' of farmers for allegedly promoting misinformation about the protests, adversely affecting public order.
- The **micro-blogging site** reinstated the accounts and tweets on its own and later **refused to go back on the decision, contending that it found no violation of its policy.**

Law Related to Blocking of Internet Services/Content:

- Information Technology Act, 2000: **In India, the** Information Technology (IT) Act, 2000**, as amended from time to time, governs all activities related to the use of computer resources.**

- **It covers all** 'intermediaries' **who play a role in the use of computer resources and electronic records.**

- **The** role of the intermediaries **has been spelt out in separate rules framed for the purpose in 2011-** The Information Technology (Intermediaries Guidelines) Rules, 2011.

Section 69 of the IT Act:

- It confers on the Central and State governments the **power to issue directions "to intercept, monitor or decrypt any information** generated, transmitted, received or stored in any computer resource".
- The **grounds on which these powers may be exercised** are:
- In the interest of the sovereignty or integrity of India, defence of India, the security of the state.
- Friendly relations with foreign states. Public order, or for preventing incitement to the commission of any cognizable offence relating to these. For investigating any offence.
- **Process of Blocking Internet Websites:Section 69A,** for similar reasons and grounds (as stated above), **enables the Centre to ask any agency of the government, or any intermediary, to block access to the public of any information generated,** transmitted, received or stored or hosted **on any computer resource.**
- Any such request for blocking access **must be based on reasons given in writing.**

Intermediaries as per the IT Act 2000:

- Intermediary is defined in **Section 2(1) (w)** of the IT Act 2000.
- The term 'intermediaries' includes **providers of telecom service, network service, Internet service and web hosting,** besides **search engines, online payment and auction sites, online marketplaces and cyber cafes.**
- It includes any person who, on behalf of another, **"receives, stores or transmits" any electronic record. Social media platforms** would fall under this definition.

Obligations of Intermediaries under the Law:

- Intermediaries are **required to preserve and retain specified information in a manner and format prescribed by the Centre** for a specified duration.
- Contravention of this provision **may attract a prison term that may go up to three years,** besides a fine.
- **When a direction is given for monitoring,** the intermediary and any person in charge of a computer resource should extend technical assistance in the form of giving access or securing access to the resource involved.
- Failure to extend such assistance may entail a **prison term of up to seven years, besides a fine.**
- **Failure to comply with a direction to block access** to the public on a government's written request also **attracts a prison term of up to seven years, besides a fine.**

Liability of Intermediaries:

- Section 79 **of the IT Act 2000 makes it clear that "an** intermediary shall not be liable for any third-party information, **data, or communication link made available or hosted by him".**
- Third party information **means any information dealt with by a network service provider in his capacity as an intermediary.**
- **This** protects intermediaries **such as Internet and data service providers and those hosting websites** from being made liable **for content that users may post or generate.**
- Sections 79 **also introduced the concept of** "notice and take down" **provision.**
- **It provides that an** intermediary would lose its immunity **if upon receiving actual knowledge or on being notified that any information, data or communication link residing in or connected to a computer resource controlled by it is being used to** commit an unlawful act **and it fails to expeditiously remove or disable access to that material.**

Supreme Court's Stand Related to Intermediaries in IT Act 2000:

- In **Shreya Singhal vs Union of India (2015),** the **Supreme Court** read down the provision to mean that the **intermediaries ought to act only upon receiving actual knowledge that a court order has been passed,** asking [them] to expeditiously remove or disable access to certain material.
- **Reason for Intermediaries to Show Compliance to IT Act:**
- **International Requirement:Most nations have framed laws** mandating cooperation by Internet service providers or web hosting service providers and other intermediaries **to cooperate with law and order authorities in certain circumstances.**
- **To Fight Cybercrime:** Cooperation between technology services companies and law enforcement agencies is now deemed a **vital part of fighting cybercrime** and various other crimes that are committed using computer resources.
- **To Prevent Misuse of Internet:** The potential of the misuse has led to law enforcement officials constantly seeking to curb the ill-effects of using the medium.

#NEW SOCIAL MEDIA CODES 2021

- **Citing instructions from the Supreme Court (Prajjawala case)** and the concerns raised in Parliament about social media abuse, the government has released guidelines that aim to regulate social media, digital news media, and **over-the-top (OTT) content providers.**

- The **government had been working on these guidelines** for over **three years** but the big push came from the recent Twitter controversy.

Key features of guidelines

- **Ensuring Online Safety and Dignity of Users, Specially Women Users:** Intermediaries shall remove or disable access within 24 hours of receipt of complaints of contents related to nudity including morphed images etc.
- Such a complaint can be filed either by the individual or by any other person on his/her behalf.
- **Grievance Redressal Mechanism:Social media intermediaries** have to appoint grievance officer, who shall register complaints in 24 hours and resolve it within 15 days of receipt. The grievance redressal official **must be resident in India**.
- **Two Categories of Social Media Intermediaries:** To **encourage innovations and enable growth of new social media intermediaries** without subjecting smaller platforms to significant compliance requirement, the Rules make a distinction between social media intermediaries and significant social media intermediaries.
- This distinction is based on the number of users on the social media platform **(which will be notified by Government).**
- The Rules require the significant social media intermediaries to follow certain additional due diligence.
- **Additional Due Diligence to be followed by Significant Social Media Intermediary** Significant Social media Intermediaries will now be required to appoint a **chief compliance officer** resident in India, who will be responsible for ensuring compliance with the rules.
- They will be required also to appoint a **nodal contact person** for 24×7 coordination with law enforcement agencies.
- Further, the platforms will need to publish a **monthly compliance report** mentioning the details of complaints received and action taken on the complaints, as well as **details of contents removed proactively by the significant social media intermediary.**
- **Significant social media** intermediary shall have a **physical contact address** in India published on its website or mobile app or both.
- In case, due diligence is not followed by the intermediary, safe harbour provisions (**section 79 of IT Act, 2000)** will not apply to them.
- **Traceability: Significant social media platforms** will be required to disclose the first originator of the mischievous content as may be required by an court order or an order passed under **Section 69 of the IT Act by the Competent Authority.**
- The order would only be passed for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to the **sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order**, or of incitement to an offence relating in relation with rape, sexually explicit material or child sexual abuse material punishable with imprisonment for a term of not less than five years.
- **Intermediary shall not be required to disclose the contents of any message** or any other information to the first originator.

Removal of Unlawful Information:

- The rules lay down 10 categories of content that the social media platform should not host. These include content that

  - threatens the **unity, integrity, defence, security or sovereignty** of India, friendly relations with foreign States, or public order, or
  - causes **incitement to the commission of any cognizable offence** or prevents investigation of any offence or is insulting any foreign States";
  - is **defamatory, obscene, pornographic, paedophilic, invasive** of another's privacy, including bodily privacy;
  - **insulting or harassing** on the basis of gender;
  - **libellous, racially or ethnically objectionable;**
  - relating or encouraging **money laundering or gambling, or**
  - otherwise **inconsistent with or contrary to the laws of India.**

- The rules stipulate that upon receipt of information about the platform hosting prohibited content from a court or the appropriate government agency, it should remove the said content within 36 hours
- **Voluntary User Verification Mechanism:** Users who wish to verify their accounts voluntarily shall be provided an appropriate mechanism to verify their accounts and provided with demonstrable and visible mark of verification.
- **Giving Users an Opportunity to Be Heard:** In cases where significant social media intermediaries removesor disables access to any information on their own accord, then a prior intimation for the same shall be communicated to the user.
- Users must be provided an adequate and reasonable opportunity to dispute the action taken by the intermediary.

Rules for OTT services

- **Brought under ambit of IT Act, 2000:** Issues relating to digital media and **OTT and other creative programmes** on Internet shall be administered by the Ministry of Information and Broadcasting but the overall architecture shall be under the Information Technology Act, which governs digital platforms.
- **Code of Ethics for online news, OTT platforms and digital media:** This Code of Ethics prescribe the guidelines to be followed by OTT platforms and online news and digital media entities.
- **Self-Classification of Content:** The **OTT platforms,** called as the publishers of online curated content in the rules, would self-classify the content into five age based categories- **U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult).**
- Platforms would be required to implement **parental locks** for content classified as U/A 13+ or higher, and **reliable age verification mechanisms** for content classified as "A".

- **Level Playing Field between Digital & Offline Media**: Publishers of news on digital media would be required to observe Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act thereby providing a level playing field between the offline (Print, TV) and digital media.
- **A three-level grievance redressal mechanism** has been established under the rules with different levels of self-regulation.
    - **Level-I:** Self-regulation by the publishers;
    - **Level-II:** Self-regulation by the self-regulating bodies of the publishers;
    - **Level-III:** Oversight mechanism: Ministry of Information and Broadcasting shall formulate an oversight mechanism. It shall publish a charter for self-regulating bodies, including Codes of Practices. It shall establish an Inter-Departmental Committee for hearing grievances.

#OBJECTIONS TO NEW SOCIAL MEDIA CODES

- The latest norms for social media intermediaries in the **New IT Rules 2021** have drawn objections from privacy experts and lawyers.

- The **Supreme Court (SC)** had in 2015 struck down Section 66A of the Information Technology Act finding it contrary to both **Articles 19 (free speech) and Article 21 (right to life) of the Constitution.**

Objection to new rules

- Asking 'significant social media intermediaries' to have automated tools to proactively track certain words is akin to **"active hunting", and will "make suspects out of people".**

- For example: For track words like interfaith marriage or love jihad, it's like criminalising an entire population as most of the people must be using these words in their normal **discussions.** This way, an entire citizenry is being made a suspect.

- ***Against Right to Privacy:*** **According to the New IT Rules of 2021,** significant social media intermediaries providing services primarily in the nature of messaging shall enable identification of the first originator of the information. This provision would end up weakening overall security, harm privacy and contradict the principles of data minimisation endorsed in the **IT Ministry's Draft Data Protection Bill 2019**.

- Identification of the first originator will require end to end encryption to be broken, thereby compromising the fundamental technology on which most apps are based on. Moreover, owing to the volume of data, encryption has become more important now as more personal data is being aggregated and analysed at a scale that was never possible before.

- ***Data Minimisation:*****Data Minimisation is a principle** that states that data collected and processed should not be held or further used unless this is essential for reasons that were clearly stated in advance to support data privacy.

- It will "**undermine the principles of open and accessible internet and the fundamental right of privacy enshrined in the Constitution, particularly in the absence of robust data protection law.**

- For Example: It contains a provision requiring significant intermediaries to provide the option for users to voluntarily verify their identities.

- **This would likely entail users sharing phone numbers or sending photos of government issued IDs to the companies**. This provision will incentivize the collection of sensitive personal data that are submitted for this verification, which can then be also used to profile and target users

Right to Privacy

- The SC described privacy and its importance in the landmark decision of **K.S. Puttaswamy v. Union of India in 2017 as a fundamental and inalienable right and attaches to the person covering all information about that person and the choices that he/ she makes.**

- The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.

- **Against Freedom of Expression**: Automated forms of censorship and surveillance could disproportionately impact users' **freedom of speech and expression, suppressing creativity.** Article 19(1)(a) of the Indian constitution guarantees the freedom of speech and expression.

- **Over Censorship:** The new rules provide stricter and wide-ranging obligations on intermediaries for proactive monitoring of content. The fear of legal liability or action could lead to over-censorship of content.

- **Lack of Accountability and Transparency:** The news rules require social media to "**deploy technology-based measures, including automated tools (Artificial Intelligence (AI)) to filter out objectionable content like child sexual abuse.**

- However, as history has shown, such tools not only suffer from major accuracy problems but also can lead to function creep.

- Earlier in 2020 an **AI-powered tool Genderify designed to identify a person's gender by analyzing their name, username or email address was shut down just a week after launch after it was blamed to be biased**.

- Coding biases in the development of AI often lead to discrimination, inaccuracies, and a lack of accountability and transparency.

- ***Gag on Online News Media:*** The rules open the way for increased scrutiny as well as increased costs of compliance and may lead to gagging of free and unhindered news reporting.

#SUPREME COURT ON LAW OF SEDITION

Recently, the **Supreme Court** protected a political leader and six senior journalists from arrest in multiple **sedition** FIRs registered against them.

Historical Background of Sedition Law:

- Sedition laws were **enacted in 17th century England** when lawmakers believed that **only good opinions of the government should survive,** as bad opinions were detrimental to the government and monarchy.
- The law was originally drafted **in 1837 by Thomas Macaulay, the British historian-politician,** but was **inexplicably omitted when the Indian Penal Code (IPC) was enacted in 1860.**
- **Section 124A was inserted in 1870** by an amendment introduced **by Sir James Stephen** when it felt the need for a specific section to deal with the offence.
- It was one of the many draconian laws enacted to stifle any voices of dissent at that time.
- **Sedition Law Today:** Sedition is **a crime under Section 124A of the Indian Penal Code** (IPC).

Section 124A IPC:

- It defines sedition as an offence committed when **"any person by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred** or contempt, or excites or attempts to **excite disaffection towards the government** established by law in India".
- Disaffection includes **disloyalty and all feelings of enmity.** However, comments without exciting or attempting to excite hatred, contempt or disaffection, will not constitute an offence under this section.

Punishment for the Offence of Sedition:

- Sedition is a **non-bailable offence.** Punishment under the Section 124A ranges from **imprisonment up to three years to a life term,** to which fine may be added.
- A person charged under this law is **barred from a government job.**
- They have to live without their passport and must produce themselves in the court at all times as and when required.

Major Supreme Court Decisions on Sedition Law:

- The SC highlighted debates over sedition in **1950** in its decisions in ***Brij Bhushan vs the State of Delhi*** and ***RomeshThappar vs the State of Madras.***
- In these cases, the court held that a law which **restricted speech on the ground that it would disturb public order was unconstitutional.**
- It also held that **disturbing the public order will mean nothing less than endangering the foundations of the State** or threatening its overthrow.
- Thus, these decisions prompted the **First Constitution Amendment, where Article 19 (2) was rewritten to replace "undermining the security of the State" with "in the interest of public order".**
- In **1962,** the SC decided on the constitutionality of Section 124A in ***Kedar Nath Singh vs State of Bihar.***
- It upheld the constitutionality of sedition, but **limited its application** to "acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence".
- It **distinguished these** from "very strong speech" or the use of "vigorous words" strongly critical of the government.
- In **1995,** the SC, in ***Balwant Singh vs State of Punjab***, held that mere sloganeering which evoked no public response did not amount to sedition.

Arguments in Support of Section 124A:

- **Section 124A of the IPC has its utility in** combating anti-national, secessionist and terrorist elements.
- **It** protects the elected government from attempts to overthrow **the government with violence and illegal means. The continued existence of the government established by law is an essential condition of the** stability of the State.
- **If** contempt of court **invites penal action, contempt of government should also attract punishment.**
- **Many districts in different states face a maoist insurgency** and rebel groups virtually run a parallel administration. **These groups openly advocate the overthrow of the state government by revolution.**
- **Against this backdrop, the abolition of Section 124A would be ill-advised merely because it has been wrongly invoked in some highly publicized cases.**

Arguments against Section 124A:

- Section 124A is a **relic of colonial legacy** and unsuited in a democracy. It is a constraint on the legitimate exercise of **constitutionally guaranteed freedom of speech and expression.**
- Dissent and criticism of the government are essential ingredients of robust public debate in a vibrant democracy. They should not be constructed as sedition.
- **Right to question, criticize and change rulers is very fundamental to the idea of democracy.**
- The **British, who introduced sedition to oppress Indians,** have themselves abolished the law in their country. There is no reason why India should not abolish this section.

- The **terms used** under Section 124A like 'disaffection' are **vague and subject to different interpretations to the whims and fancies** of the investigating officers.
- IPC and **Unlawful Activities Prevention Act 2019** have provisions that penalize "disrupting the public order" or "overthrowing the government with violence and illegal means". These are sufficient for protecting national integrity. There is no need for Section 124A.
- The sedition law is **being misused as a tool to persecute political dissent.** A wide and concentrated executive discretion is inbuilt into it which permits the blatant abuse.
- In 1979, India **ratified the International Covenant on Civil and Political Rights (ICCPR),** which sets forth internationally recognized standards for the protection of freedom of expression. However, misuse of sedition and arbitrary slapping of charges are inconsistent with India's international commitments.

Conclusion

- India is the largest democracy of the world and the **right to free speech and expression is an essential ingredient of democracy.** The expression or thought that is not in consonance with the policy of the government of the day should not be considered as sedition.
- **Section 124A should not be misused** as a tool to curb free speech. The SC caveat, given in Kedar Nath case, on prosecution under the law can check its misuse. It needs to be **examined under the changed facts and circumstances** and also on the anvil of ever-evolving tests of **necessity, proportionality and arbitrariness.**
- The higher judiciary should use its supervisory powers to **sensitize the magistracy and police to the constitutional provisions protecting free speech.**
- The **definition of sedition should be narrowed down,** to include only the issues pertaining to the territorial integrity of India as well as the sovereignty of the country.

#AMENDMENTS IN JUVENILE JUSTICE ACT, 2015

Union Cabinet ushered in some major amendments to **the Juvenile Justice (Care and Protection of Children) Act 2015** in a bid to bring in clarity and also entrust more responsibilities on bureaucrats when it comes to implementing provisions of the law.

Juvenile Justice (Care and Protection of Children Act) 2015

- **Updated Legislation**: It was introduced and passed in Parliament in 2015 to replace the Juvenile Delinquency Law and the **Juvenile Justice (Care and Protection of Children Act) 2000**.
- **Change in nomenclature**: The Act changes the nomenclature from Juvenile to child or 'child in conflict with law'. Also, it removes the **negative connotation associated with the word "juvenile".**

- **Special Provisions for Age 16-18 years:** One of the main provisions of the new Act was that juveniles charged with heinous crimes and who are between the **ages of 16-18 years would be tried as adults and processed through the adult justice system**.
- This provision received an impetus after the 2012 Delhi gangrape in which one of the accused was just short of 18 years, and was therefore tried as a juvenile.
- **Juvenile Justice Board**: The nature of the crime, and whether the juvenile should be tried as a minor or a child, was to be **determined by a Juvenile Justice Board (set up in every district).**Also Child Welfare Committees must be set up in every district. Both must have at least one woman member each.
- **Adoption Related Clauses:** Another major provision was that the Act streamlined adoption procedures for orphans, abandoned and surrendered children and the existing Central Adoption Resource Authority (CARA) has been given the status of a statutory body to enable it to perform its function more effectively.
- **Inclusion of New Offences:** The Act included several new offences committed against children **(like, illegal adoptions, use of child by militant groups, offences against disabled children, etc)** which are not adequately covered under any other law.

Amendments passed by the Union Cabinet

- **The inclusion of serious crimes apart from heinous crimes**: It has included for the first time the category of "serious crimes" differentiating it from heinous crimes, while retaining heinous crimes. Both heinous and serious crimes have also been clarified for the first time, **removing any ambiguity.**
- What this means is **that for a juvenile to be tried for a heinous crime as an adult**, the punishment of the crime should not only have a maximum sentence of seven years or more, but also a minimum sentence of seven years.
- This provision has been made to ensure that children, as much as possible, are protected and kept out of the adult justice system.
- Heinous crimes with a minimum imprisonment of seven years pertain mostly to sexual offences and violent sexual crimes. Crime like the possession and sale of an illegal substance, such as drugs or alcohol, will now fall under the ambit of a "serious crime''.

Expanding the purview of district and additional district magistrates

- The **NCPCR report of 2019-19** had found that not a single Child Care Institution in the country was found to be **100 per cent compliant to the provisions of the JJ Act.**
- **DM and ADMs will monitor the functioning of various agencies** under the JJ Act in every district. This includes the Child Welfare Committees, the Juvenile Justice Boards, the District Child Protection Units and the **Special juvenile Protection Units.**
- Amendment says that no new children's home can be opened without the **sanction** of the DM. They are also responsible now for ensuring that CCIs falling in their district are **following all norms and procedures** (earlier the process was relaxed and lacked effective oversight).
- The DM will also carry out **background checks of Child Welfare Committee members**, who are usually social welfare activists, including educational qualifications, as there is no such provision currently to check if a person has a case of girl child abuse against him.

- To hasten the process of adoption and ensure the **swift rehabilitation of children** into homes and foster homes, the amendment further provides that the DM will also now be in charge of sanctioning adoptions, removing the lengthy court process.

#TRP SCAM 2020

- Recently, the Mumbai Police has claimed about a scam about the manipulation of **TRPs (Target Rating Points)** by some TV channels by rigging the devices used by the **Broadcast Audience Research Council (BARC) India.**
- According to Mumbai Police, three TV Channels, including Republic TV, are being probed on charges of TRP or Television Rating Points manipulation.
- **Param Bir Singh, Mumbai Police Commissioner said that Republic TV, headed by Arnab Goswami**

and two other TV channels - Fakt Marathi and Box Cinema are under scrutiny for manipulating ratings.Most of the times we have seen people watching TV and we heard about the TRP of channel or programme like the TRP of a channel is increasing day by day and so on.

- Recently, A **sessions court in Mumbai has rejected the bail application of former CEO of the Broadcast Audience Research Council (BARC) Partho Dasgupta**, who was arrested in the television rating points (TRP) scam.
- **Dasgupta was arrested on December 24** and is one of the prime accused in the alleged manipulation of TRPs. The Mumbai police recently filed a 3,400-page chargesheet in which they annexed WhatsApp chats between R**epublic TV founder Arnab Goswami and Dasgupta**, alleging that they colluded to inflate the channel's ratings. Dasgupta is accused of criminal breach of trust and cheating.
- The court had reserved its orders on Tuesday after the **Mumbai Police "vehemently" argued against granting bail to the former BARC chief.** Special public prosecutor ShishirHirey read excerpts of chats between Goswami and Dasputa, apart from arguing that the latter is an influential person who can tamper with evidence and witnesses if released on bail.

What is TRP?

- **TRP is a Television Rating Point**. It is the tool that tells us which channel and the programme are viewed most or it indicates the popularity of a TV channel or a programme. It shows how many times people are watching a channel or a **particular programme.**
- **TRP enables advertisers** and investors to understand the mood of the people. According to the TRP of a TV Channel or programme advertisers decide where to display their advertisements and investors will decide about the investment of the money.
- **What happens when TRP increases or decreases:** The increase or decrease in the TRP of any programme directly affects the income of that TV channel in which the **programme is coming**. Do you know that any TV channel like Sony, Star Plus, Z Channel, etc. earn money through advertisements? If suppose the TRP of a program or channel is low which means that people are watching it less so, advertisers will give fewer advertisements and pay less.
- But, **if the TRP is high for the programme then more advertisements, advertisers, and money.** So, we can say that TRP depends not only on the channel but on the programme as well. For example, if the TRP of a programme says Rising Star is higher than any other programme then the advertiser would like to give advertisements in that programme and also pay more.
- **What is TRP Rate:** The **TRP rate is one on which the TRP of a TV channel is calculated**. TRP of any channel or programme depends upon the programme that is displayed. It can be understood that when a film star arrives in a program for the promotion of his movie, the TRP of that programme increases automatically because people like to see that film star more.
- So now you might have understood that the TRP is the Television Rating Point, which helps in tracking the popularity and viewers of any program or channel.

Methodology of Calculation:

- **Bar-o-meters:** BARC has installed **Bar-O-meters** in over **45,000 empanelled households.** These record viewing details as well as audio watermarks of content.

- Audio watermarks are embedded in video content prior to broadcast. These watermarks are not audible to the human ear, but can easily be detected and decoded using dedicated hardware and software.
- **Selection of Households:** The households are chosen by an **annual Establishment Survey** which is a large-scale face-to-face survey of a sample of approximately 3 lakh households from the target population.
- The panel chosen to capture TRPs must be representative of the country's population, and the methodology must be economically viable for the industry.
- **Classification of Households:** These households are classified into 12 categories under the New Consumer Classification System (NCCS) adopted by BARC in 2015, based on the **education level of the main wage earner** and the **ownership of consumer durables** from a list of 11 items ranging from a power connection to a car.
- **Data Collection:** While watching a show, members of the household register their presence by pressing their **separate viewer ID** button.
- This captures the duration for which the channel was watched and by whom and provides data on viewership habits across age and socio-economic groups.

Precautions to Prevent Rigging:

- **The viewing behaviour of panel homes is reported to BARC India** directly and daily.
- Coincidental checks **either physically or telephonically are done regularly. Certain** suspicious outliers **are also checked directly by BARC India.**
- **These households** rotate randomly **every year and they are kept confidential.**
- Significance of TRP:
- **These** influence programmes produced **for the viewers. Better ratings would promote a programme while poor ratings will discourage a programme.**
- **TRPs are the main** currency for advertisers **to decide which channel to advertise on by calculating the** cost-per-rating-point (CPRP).

Limitations of TRP:

- The panel can be **infiltrated or tampered** by bribing viewers or cable operators or tampering with the selection of panel.
- If the **sample size is very small,** e.g. for English News channels, the manipulation becomes easier as even manipulating a few homes will change the TRP.
- There is an **absence of any specific law** through which the agents/suspects involved in panel tampering/infiltration could be penalised.
- About 70% of the revenue for television channels comes from advertising and only 30% from the subscription. **Dependence on advertisements** for revenue is leading to broadcasting content which suits the advertisers.

MAHARASHTRA GOVERNMENT V. CBI IN TRP SCAM CASE

The Maharashtra government **withdrew its general consent** to the **Central Bureau of Investigation (CBI)** to probe cases in the State.

- The move comes a day after the CBI registered an FIR in the **TRP** scam after taking over the probe based on an FIR filed in Uttar Pradesh.
- The Maharashtra government had an **apprehension** that the CBI would take over the TRP scam case that the Mumbai Police is already investigating.
- Earlier this year (2020), the CBI had also taken over the investigation into actor Sushant Singh Rajput's death, which was being probed by the Mumbai Police.
- The Maharashtra government **suspects the CBI of acting at the behest of the Centre.**
- The Supreme Court in the past has called the CBI a **"caged parrot"** that sings the Centre's tune.
- Maharashtra is the **third State after West Bengal and Rajasthan to take such an action.** The current confrontation also strengthens the perception that states in opposition see the Centre as weaponizing the CBI to control on Opposition-led governments in states.

General Consent

- Unlike the **National Investigation Agency (NIA)**, which is governed by its own NIA Act, 2008 and has **jurisdiction across the country,** the **CBI is governed by the Delhi Special Police Establishment Act, 1946 (DSPE Act, 1946)** that **makes consent of a state government mandatory** for conducting investigation in that state.
- There are **two kinds of consent- case-specific and general.** Given that the CBI has jurisdiction only over central government departments and employees, it can investigate a case involving state government employees or a violent crime in a given state only after that state government gives its consent.
- **Section 6 of the DSPE Act, 1946** empowers the state government to give or deny consent to CBI officers to investigate the matter within the state.
- **"General consent"** is normally given to help the CBI seamlessly conduct its investigation into cases of corruption against central government employees in the concerned state. Almost all states have given such consent.

Impact of Withdrawal of General Consent

- It means the CBI will not be able to register any fresh case involving a central government official or a private person stationed in Maharashtra **without getting case-specific consent.**
- Withdrawal of consent **will only bar the CBI from registering a case** within the jurisdiction of concerned states. The CBI could still file cases in Delhi and continue to probe people inside Maharashtra.
- In simple terms withdrawal of consent means that **CBI officers will lose all powers of a police officer** as soon as they enter the state unless the state government has allowed them.
- It will have **no impact on investigation of cases already registered** with CBI as old cases were registered when general consent existed.
- However, the CBI has recently started taking recourse in a Calcutta High Court judgment.
- The HC, in its order in the ***Ramesh Chandra Singh and another vs CBI, 2020*** observed that CBI's power to investigate and prosecute its own officials cannot be in any way impeded or interfered by the state even if the offenses were committed within the territory of the state.

OTHER POINTS RELATED TO IT:

TELECOM REGULATORY AUTHORITY OF INDIA (TRAI)

- The **Telecom Regulatory Authority of India** (**TRAI**) is a statutory body set up by the Government of India under section 3 of the Telecom Regulatory Authority of India Act, 1997. It is the regulator of the telecommunications sector in India. It consists of a Chairperson and not more than two full-time members and not more than two part-time members. The TRAI Act was amended by an ordinance, effective from 24 January 2000, establishing a **Telecom Disputes Settlement and Appellate Tribunal (TDSAT)** to take over the adjudicatory and disputes functions from TRAI.
- **Telecom Regulatory Authority of India** was established on 20 February 1997 by an Act of Parliament to regulate telecom services and tariffs in India. Earlier regulation of telecom services and tariffs was overseen by the Central Government. The current Chairman of TRAI is PD Vaghela, an IAS officer of the Gujarat cadre, batch of 1986.
- **TRAI's mission** is to create and nurture conditions for the growth of telecommunications in India to enable the country to have a leading role in the emerging global information society.
- **One of its main objectives is to provide a fair and transparent environment** that promotes a level playing field and facilitates fair competition in the market. TRAI regularly issues orders and directions on various subjects such as tariffs, interconnections, quality of service, Direct To Home (DTH) services and mobile number portability.
- In January 2016, **TRAI introduced an important change in telecommunication** that would benefit all consumers. Effective from 1 January 2016, consumers will be compensated for call drops.
- However, there is a catch, per the rule, mobile users will get compensation of Re 1 for every dropped call but it will be limited to a maximum three dropped calls in a day. This regulation has been quashed by Supreme Court on the ground of being "unreasonable, arbitrary and unconstitutional".
- **Allegedly, TRAI bent its rules multiple times to let Jio,** a subsidiary **of Reliance Industries Limited, become** a market leader in the span of a few years. Jio was allowed to "test" its services for a much longer period and with a much larger subscriber base than was the industrial norm.
- In a letter to the telecom department, **Rajan Mathews of the Cellular Operators Association of India wrote that Reliance's offers were"full-blown and full-fledged services** masquerading as tests, which bypass regulations and can potentially game policy features."
- TRAI was also accused of modifying its definition of "significant market power" so as to exclude Jio from strict scrutiny. Whilst initially the definition of market power was based on total network activity, the parameters were changed to subscriber share and gross revenue. Jio qualified as a significant market power according to the first definition but not the second.

BROADCAST AUDIENCE RESEARCH COUNCIL (BARC)

- **Broadcast Audience Research Council (BARC) India** is a joint-industry body founded by stakeholder bodies that represent Broadcasters (IBF), Advertisers (ISA) and Advertising & Media Agencies (AAAI). It is also the world's largest television measurement science industry-body.
- Built **upon a robust and future-ready technology backbone,** BARC India owns and manages a transparent, accurate, and inclusive TV audience measurement system.
- Apart from the currency products to the Indian TV industry, BARC India also provides a suite of Insight products designed for broadcasters, advertisers and agencies.
- The **Big Data and Insights generated by BARC India powers efficient media spends and content decisions in a highly dynamic and growing television sector.** Currently being scaled up to 180,000 individuals, BARC India is also the largest measurement company of its kind in the world.
- It uses Audio Watermarking technology to measure viewership of TV channels, and the system also allows measurement of time-shifted viewing and simulcasts. The company was incorporated in 2010 and is based in Mumbai, India.
- With the viewership habits of over 197 million TV households (**accounting for 836 million TV viewingindividuals) Barc being analysed by BARC India**, it is the world's largest television audience measurement service.Its measurement system is based on a sample of 40,000 "panel homes" which will go up to 50,000 panel homes.
- It launched its TV viewership measurement service in April 2015, with coverage of C&S TV homes in towns with a population of 1 lakh and above. In October 2015, it started measuring All India TV homes (TV viewers in urban and rural India).
- **BARC (Broadcast Audience Research Council) India** is an industry body set up to design, commission, supervise and own an accurate, reliable and timely television audience measurement system for India. It currently measures TV Viewing habits of 197 million TV households in the country, using 40,000 sample panel homes. This will go up to 50,000 in the next couple of years, as mandated by the Ministry of Information & Broadcasting.
- Guided by the recommendations of the **TRAI (Telecom Regulatory Authority of India) and MIB notifications** of January 2014, BARC India brings together the three key stakeholders in television audience measurement - broadcasters, advertisers, and advertising and media agencies, via their apex bodies.
- **BARC India is committed towards establishing a robust, transparent and accountable governance framework for providing data points that are required to plan media spends more effectively.**
- **Standardisation Certificates** obtained by BARC India are CESP France Certification in April 2017 which validates representativeness of BARC India's TV Measurement Panel and by ISI, Kolkata in May 2018 certifying the representativeness of BARC India's Panel Design & Household Selection.

CENTRAL VIGILANCE COMMISSION (CVC)

- There are 3 principal actors at the national level in the **fight against corruption:** the **Lokpal**, the **Central Vigilance Commission (CVC)**, and the **Central Bureau of Investigation (CBI)**.
- Central Vigilance Commission is the apex vigilance institution, **free of control from any executive authority, monitoring all vigilance activity under the Central Government** and advising various authorities in Central Government organizations in planning, executing, reviewing and reforming their vigilance work.
- **Background:** The CVC was set up by the Government in February, 1964 on the recommendations of the Committee on Prevention of Corruption, headed by **K. Santhanam.**
- The Parliament enacted **Central Vigilance Commission Act, 2003 (CVC Act)** conferring **statutory status** on the CVC.
- It is an **independent** body which is **only responsible to the Parliament.**
- **Composition:** It is a **multi-member Commission** consisting of a Central Vigilance Commissioner (Chairperson) and not more than 2 Vigilance Commissioners (Member).
- The Central Vigilance Commissioner and the Vigilance Commissioners are **appointed by the President** on the **recommendations of a Committee** consisting of the Prime Minister (Chairperson), the Minister of Home Affairs (Member) and the Leader of the Opposition in the House of the People (Member).
- **Tenure:** The term of office of the Central Vigilance Commissioner and the Vigilance Commissioners is **4 years** from the date on which they enter their office or till they attain the **age of 65 years,** whichever is earlier.
- **Role and Functions:** Exercise **superintendence** over the functioning of the **Delhi Special Police Establishment** (CBI) insofar as it relates to the investigation of offences under the **Prevention of Corruption Act, 1988.**
- The CVC **receives complaints** on corruption or misuse of office and **recommends appropriate action.** Following institutions, bodies, or a person can approach CVC: **Central government, Lokpal** and **Whistle blowers**.
- CVC has **no investigation wing of its own** as it **depends on the CBI and the Chief Vigilance Officers (CVO) of central organizations,** while CBI has its own investigation wing drawing its powers from Delhi Special Police Establishment Act.

DIRECTORATE OF ENFORCEMENT

- The **Directorate of Enforcement** (**ED**) is a law enforcement agency and economic intelligence agency responsible for enforcing economic laws and fighting economic crime in India. It is part of the Department of Revenue, Ministry of Finance, and Government of India.
- It is **composed of officers from the Indian Revenue Service, Indian Corporate Law Service, Indian Police Service and the Indian Administrative Service** as well as promoted officers from its own cadre. The total strength of the department is less than 2000 officers out of which around 70% of officials came from deputation from other organizations while ED has its own cadre, too.
- **Assistant Enforcement Officer are recruited for ED cadre**, these officers are the only departmental staff that serves the ED. AEOs are promoted to various levels of the hierarchy and they are the backbone of this small department.
- The origin of this Directorate goes back to 1 May 1956, when an 'Enforcement Unit' was formed, in

Department of Economic Affairs, for handling Exchange Control Laws violations under Foreign Exchange Regulation Act, 1947.

- In the year 1957, **this Unit was renamed as 'Enforcement Directorate'. Sanjay Kumar Mishra former Chief Commissioner of Income Tax, New Delhi was appointed as ED chief in the rank of Secretary to Government of India.**
- The prime objective of the **Enforcement Directorate** is the enforcement of two key Actsof the Government of India namely, the **Foreign Exchange Management Act 1999 (FEMA) and the Prevention of Money Laundering Act 2002 (PMLA).**
- The ED's (Enforcement Directorate) official website enlists its other objectives which are primarily linked to checking money laundering in India. In fact, this is an investigation agency so providing the complete details on public domain is against the rules of GOI.

OTHER MAJOR SCAM IN INDIA:

- **Various telecom companies such as Reliance Jio, Bharti Airtel and Vodafone** Idea have participated in the pre-bid conference conducted in regard to the spectrum auctions. The telecom department had asked all the telecommunication firms, telcos, to submit their pre-written queries about the rules and processes by January 15.
- The **word spectrum gained popularity in 2010-11** when India reported its biggest scam called 2G Spectrum Scam. Various politicians were associated with this case and many were arrested.

What is Spectrum?

Spectrum is a range of radio waves used for communication purposes. It would include FM **and AM radio broadcasts too and WiFi or Bluetooth.** With Spectrum come frequency. Frequency is the number of repetitions of the wave that one can see in a period. This **means is a wave repeat slowly,** it is low frequency and if it repeats more times in a period, it would be referred to as high frequency. Thus spectrum refers to the waves that surround us and can pass through anything. This means it needs to be regulated also which is why they are divided into bands. If left at any frequency, there would be a **complete chaos and the interference would be amplified. Thus band division is helpful.**

SCAMS THAT DISTURBED BANKING SYSTEM IN INDIA

- In the **present-day economic system, banks play a very important role in the economic development of the country.** Nowadays, banks have diversified their activities and are getting into new schemes and services that create opportunities for financial inclusion. As the banking sector is flourishing, it is getting plagued by some operational problems such as frauds etc
- **Financial Stability Report of the Reserve Bank of India (RBI) shows**, that the Indian banking system reported about **6,500 instances of fraud involving over ₹30,000 crore** in 2017-18. Central Vigilance

Commission (CVC) analysed the top 100 banking frauds in different sectors and has also suggested some measures that will help avoid such unethical activities in the future.

- Banking frauds attracted national attention when the Punjab National Bank reported earlier this year that it had been defrauded by companies related to jeweler Nirav Modi and Mehul Choksi. Several other cases of large banking frauds were reported subsequently, which raised questions about the ability of banks to contain them.

Here are some of the biggest scams that disturbed the country's banking system:

- In 2011, investigative agency CBI revealed that executives of certain banks such as the Bank of Maharashtra, Oriental Bank of Commerce and IDBI created almost 10,000 fictitious accounts, and an amount of Rs 1,500 crore worth loans were transferred.
- **Another scam that was unfolded in 2014** was the bribe-for-loan scam involving ex-chairman and MD of Syndicate Bank SK Jain for involvement in sanctioning RsRs 8,000 crore.
- In **2014, Vijay Mallya was also declared a willful defaulter by Union Bank of India**, following which other banks such as SBI and PNB followed suit.
- In 2015, another fraud that raised eyebrows involved employees of Jain Infraprojects, who defrauded Central Bank of India to the tune of over Rs 2,000 crore.
- One of the **biggest banking frauds of 2016 is the one involving Syndicate Bank**, where almost 380 accounts were opened by four people, who defrauded the bank of Rs 10 billion using fake cheques, Letter of Undertakings (LoUs) and LIC policies.
- The fresh bank fraud to the tune of Rs 11,450 crore involving diamond merchant Nirav Modi. It has come to light that the company, in connivance with retired employees of PNB, **got at least 150 LoUs, allowing Nirav Modi Group to defraud the bank and many other banks who gave loans to him.**

The reason behind these frauds

- **Most frauds show that banks did not observe due diligence, both before and after disbursing loans.**
- **Poor level of checks and balances in the banking system is also one of the reason.**
- **Lack of technology and fraud monitoring agencies to detect frauds makes the problem more complex.**
- **There is an absence of an effective mechanism to monitor the credit flow.**
- **Flawed risk-mitigation design, which creates an excessive focus on credit or market risks, but focuses less on operational risks also leading to more breaches.**
- **Excessive dependence on manual supervision, at both external and internal levels makes it impossible to manually control and supervise the sheer volume of transactions.**
- **The disintegrating moral fibre of Indian businessmen, bankers and other white-collar professionals, nepotism in internal committees of banks, unnecessary political interventions lead to increased frauds.**

- **The political pulls and pressures on investigating agencies, and long-drawn processes of legal system act less as a deterrent.**

#DEATH PENALTY FOR THE SEXUAL OFFENCES

- **Sexual offences against women and children are one of the most heinous crimes** against humanity. Given this, the public has a real and legitimate interest in addressing such **concerns, leading to the death penalty's** demand to deter sexual offences purportedly.
- In this context, on **Human Rights Day 2020**, the Maharashtra cabinet approved the Shakti Bill, enlarging the scope of harsher and mandatory sentences — including the death penalty — for non-homicidal rape (excluding **Marital Rape**).
- The **Shakti Bill comes** amid the recent legislative trend to invoke the death penalty for sexual offences. For instance, the Andhra Pradesh government passed the **Disha Bill in 2020** (pending presidential assent), that **provides the death penalty for the rape of adult women**.
- However**, introducing the death penalty** diverts attention from deep-rooted issues & long-term solutions. It suggests that the reason for such crimes is that the punishment is not severe enough.

Associated Issues With Death Penalty Against Sexual Offences

- **May Do More Harm To Victim:** Women's right groups have argued that the death penalty is a knee-jerk and populist solution to counter sexual offences.

- Also, Child-right activists insist that introducing capital punishment for non-homicidal rape may lead rapists to kill their victims to erase testimonial evidence.
- **Death Penalty Won't Remove Prejudice:** Introducing harsher penalties does not remove systemic prejudices from the minds of judges and the police.
- Generally, police might refuse to register complaints or acquit offenders in cases they do not consider "serious" enough to warrant a mandatory minimum.
- **Lower Rate of Conviction:** According to crime data from the **National Crime Records Bureau**, in 93.6% of sexual offences, the perpetrators were known to the victims.
- Therefore, introducing capital punishment would deter complainants from registering complaints.
- **Delay in Closure of Justice:** The execution of a death sentence comes at the end of multiple stages of appeals and avenues of seeking clemency.
- This time extended to the defendant to exhaust all legal remedies will delay the judicial process's finality and closure—militating against the competing interest of ensuring speedy justice.
- It might also see an increase in instances of instant retribution, such as the **extrajudicial killing of gang-rape and murder** suspects in Hyderabad late in 2019.
- **Regressive Step:** The **Justice Verma Committee Report** that made several recommendations on the laws on sexual offences (**after Nirbhya rape case 2012**), held that the death penalty's deterrent effect is "a myth".
- The report stated that it would be a regressive step to introduce the death sentence in non-homicidal cases.

Other Issues Related to Shakti Bill

- The other **anti-women assertion in the bill moves** away from the standard of affirmative consent in cases involving adult victims and offenders.

- **Significant advocacy from the women's movement** led to introducing an affirmative standard of consent, rooted in unequivocal voluntary agreement by women through words, gestures or any form of verbal or non-verbal communication.
- In a sharp departure, the bill stipulates that valid consent can be presumed from the **"conduct of the parties" and the "circumstances surrounding it".**
- Rape trials continue to be guided by misogynistic notions, expecting survivors to necessarily resist the act, suffer injuries and appear visibly distressed.
- Therefore, the **bill's vaguely worded explanation holds dangerous possibilities of expecting survivors** to respond only in a particular manner, thus creating the **stereotype of an "ideal" victim.**

CONCLUSION

- **Plugging Gaps in Justice Delivery:** The most severe gaps in the justice delivery system are reporting a police complaint. Therefore, the focus of the criminal justice system needs to shift from sentencing and punishment to the stages of reporting, investigation, and victim-support mechanisms. In this context, the following measures must be ensured:
  - The victim reports a case without any fear.
  - Police to conduct a sound investigation.
  - Victim protection throughout the trial.
  - **Making testification** as easy and as quick as possible.
  - **Allocation of resources** and more robust implementation of the law than is currently evident.
- **Sensitisation At a Broader Level:** Despite the ever-increasing ambit of the death sentence, there has been little effort to address prejudices in society.
- **Addressing the prejudices in the society** against sexual offences requires **sensitisation of functionaries** of the justice system & more importantly society.

#FARM BILL, 2020

❖ Out of the **three bills, Lok Sabha**, through voice vote, passed the **Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020** and the

Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020.

- The **Essential Commodities (Amendment) Bill** was passed earlier. Agriculture Minister **Narendra Singh Tomar** said the bills are not going to override the **Minimum Support Price mechanism**, and adequate protection of land ownership was in place to protect farmer interests. They will now be tabled in Rajya Sabha and will become laws after the Upper House passes them.

PROVISIONS OF THE BILL

- ***Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020*** will enable barrier-free trade in agricultural produce.
- It will also **empower farmers** to engage with investors of their choice.
- The bill seeks to create an ecosystem where the **farmers and traders enjoy the freedom of choice** relating to sale and purchase of farmers' produce.
- It also facilitates remunerative prices by providing a competitive a trading channels to promote efficient, **transparent and barrier-free inter-State and intra-State trade**.
- It also enables the commerce of farmers' produces outside physical premises of markets or deemed markets notified under State agricultural produce market legislations & provides a facilitation framework for electronic trading.

- ***Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020*** will help farmers enter into contract with agricultural business firms, wholesalers, foot processors and large scale retailers.
- The **small and marginal farmers in India account to 86 percentage of total farmers** in the country. They are farmers with land less than 5 hectare.
- It will help these farmers gain by aggregation and contracts. The bill will also help in bringing up an effective dispute resolution mechanism with redressal timelines.

- ***Essential Commodities (Amendment) Bill*** seeks to remove commodities like edible oils, cereals pulses, oil seeds, onion and potatoes from the list of essential commodities.
- It will remove fears of private investors regarding the regulatory interference in their operations. The bill will provide farmers the freedom to produce, hold, move, distribute and supply.
- Though, **India has surplus agri-commodities** in most of the cases, farmers still are unable to get better prices. It is because of **poor investment in storage and processing facilities.**
- The bill has been introduced to pull investment in cold storage and modernization of food supply chain.

WHO IS PROTESTING AGAINST THE BILL

- Farmers in Punjab have organized a three-day protest against the bills.

- Opposition parties, including **TMC, Congress, DMK and BSP,** opposed the agriculture sector reform bills, saying they were **against the interests of small and marginal farmers**.
- Congress upped its ante against the Modi government, terming the move a conspiracy to **defeat the Green Revolution**.
- "**Minister of Food Processing Industries** and the only **SAD representative** in the Modi government, **Harsimrat Kaur Badal, resigned** from the Union Cabinet, protesting against the bills, alleging the Bills to be detrimental to Punjab's agriculture sector.

MAJOR CONCERNS ABOUT THE BILL

❖ ***Centre v. State (Federal Angle):*** The provisions in the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020, provide for unfettered commerce in designated trade areas outside APMC jurisdictions.
- Apart from this, the bill empowers the Centre government to issue orders to States in furtherance of the law's objectives.
- However, matters of trade and agriculture being the part of subjects on the State list have caused resentment in States.

❖ ***Lack of Consultation:*** First the ordinance route and now the hastily attempt to pass the Bills without proper consultation adds to the mistrust among various stakeholders including farmers.
- Also, by allowing '**trade zones' to come up outside the APMC area,** farmers have become apprehensive that the new system would lead to eventual exit from the minimum support price.

❖ **Absence of any regulation in non-APMC mandis:** Another issue that is raised by the farmers is that the proposed bills give the preference for corporate interests at the cost of farmers' interests.
- In absence of any regulation in non-APMC mandis, the farmers may find it difficult to deal with Corporate, as they solely operate on the motive of profit seeking.

❖ **Non-Favorable Market Conditions:** While retail prices have remained high, data from the Wholesale Price Index (WPI) suggest a deceleration in farm gate prices for most agricultural produce.
- With rising input costs, farmers do not see the free market based framework providing them remunerative prices.

- These fears gain strength with the experience of States such as Bihar which abolished APMCs in 2006. After the **abolition of mandis, farmers in Bihar** on average received lower prices compared to the MSP for most crops.

#SC STAYS IMPLEMENTATION OF FARM LAWS

- The Supreme Court on January 12, 2020 criticized the government's handling of the farmers' protests and **stayed the implementation of the three farm laws.**
- The apex court stated that it is **going to suspend the implementation of the three farm laws** until further orders. The court stated that it will be **forming a committee to address the issue.**

- The Supreme Court gave its verdict while hearing a batch of petitions challenging the **three farm Laws and those seeking removal of protesting farmers from Delhi borders.**

About the Committee:

- The Supreme Court has suggested forming a committee to resolve the **deadlock between Government and protesting farmers.**
- The top court **stated that the committee will be a part of judicial proceedings.** It also stated that every person who is genuinely interested in solving the problem is expected to go before the Committee.
- The court assured that the **Committee will not punish anyone or pass any orders, it will just submit a report to the apex court.**
- According to **Chief Justice of India SA Bobde,** the members of the committee will include Agricultural economist **Ashok Gulati, Harsimrat Mann, Pramod Joshi and Anil Ghanwat.** A complete order will be released by the Court by the end of today.

SC verdict on farm laws

• The **Chief Justice of India** assured that the top court w**ill stay the implementation of the three farm laws and protect farmers' land** but the farmer's will have to agree to participate before an Independent Committee.
• The **top court said** that it will **pass an interim order saying the no farmers land can be sold for contract farming.**
• The court said that it is concerned about only the validity of the laws and about **protecting the life and property of citizens affected by protests.**
• The CJI stated that the court has the power to suspend the legislation but the suspension will not be for an empty purpose. It stated that it will form a committee that will submit a report to it.
• The apex court further declined the farmer's request that the Prime Minister should approach them to negotiate. The CJI said that the **Prime Minister is not a party here** and informed that the Agriculture Minister has already held talks with the farmers but in vain.

- ***Impact:*** The **Supreme Court** has ordered the **formation of a committee to resolve the deadlock between the government** and the farmers in the backdrop of the protesting farmers' unions expressing their unwillingness to participate in the negotiation talks.

- ***Farmers' reaction to the SC order***: The **'SamyukthaKisanMorcha'** had issued a statement on January 11, 2021 saying that while all organizations welcome the suggestions of the top court to stay the implementation of the farm laws, they are collectively not willing to participate in any proceedings before a committee appointed by the court.
- The **farmers' unions, in their joint statement**, said that all talks before the committee will be fruitless looking at the approach of the government, which made it clear before the top court on January 11, 2021 that they will not agree to the discussion for the repeal of the three farm laws before the committee.

Background of the verdict

- The Supreme Court had said that it **was extremely disappointed at the central government's response to the farmers' protests** against the three farm laws, which have been going on for over a month at Delhi borders.
- The top court had asked then why the **new farm laws cannot be put on hold while the government argued that the laws benefit farmers.**

#LABOUR CODES BILL, 2020

- The Lok Sabha passed three new labour codes – **the Industrial Relations Code Bill, 2020, Code on Social Security Bill, 2020 and the Occupational Safety, Health and Working Conditions Code Bill, 2020** – as the government seeks to amalgamate 44 central labour Acts into four codes, towards simplifying India's labour laws, and improve ease of doing business.
- As per the **Industrial Relation code Bill**, a worker cannot go on strike without providing, at least, a 60-day notice. The **Social Security code Bill** proposes the formation of a Social Security Fund to provide social security to unorganized workers, gig workers, and platform workers.
- The **Occupational Safety code bill** seeks to subsume the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 along with 13 other Acts.

PROVISIONS OF THE BILL

- The bill recognises trade unions.It seeks to provide pension and medical benefits to gig workers. The codes will define areas and conditions in which fixed-term employment can be allowed.
- The bill seeks to replace three labour laws namely, the Industrial Disputes Act, 1947; the Trade Unions Act, 1926; and the Industrial Employment (Standing Orders) Act, 1946.
- It subsumes 44 labour laws into four codes namely, on wages; industrial relations; social security and safety; health and working conditions.
- It proposes that, employee can strike only after providing notice 14 days prior to strike. Factories, mines or plantations needs to take permission from central or state government before firing their workers.

- Industrial Tribunals would also be constituted for the settlement of industrial disputes. Industrial Tribunal comprises a judicial member and an Administrative member.

LABOUR CODES BILL 2019 & 2020

- **Firstly**, the **2020 Labour Code Bills** raise several thresholds. The Factories Act of 1948 defines any manufacturing unit as a factory if it employs **10 workers** (and uses electricity) or 20 workers (without using electric power). **These thresholds are being raised to 20 and 40 workers, respectively.**
- **Secondly**, there are some changes related to contract labour. The 2019 Bill was applicable to establishments which employed at least 20 contract workers and to contractors supplying at **least 20 workers**; these thresholds have been **raised to 50 workers.**
- **Thirdly**, the 2019 Bill on **Occupational Safety** allowed the government to prohibit employment of women in undertaking operations that could be dangerous to their health and safety. The 2020 Bill removes this power to prohibit employment and instead allows the government to require employers to provide adequate safeguards.

CRITICISM OF THE BILL

- The opposition and labour unions contend that the bills make it easier to lay off workers and put restrictions on their right to protest.
- The **Industrial Relations Code Bill** allows companies with up to 300 workers to lay off people without the state government's approval. Under the same law, no industrial worker is allowed to go on strike without a **60-day notice.**
- Labour organization **Bhartiya Mazdoor Sangh**, which is affiliated to the BJP's ideological mentor **Rashtriya Swayamsevak Sangh**, has opposed the labour code bills. The organization, which has issued a series of demands, contended that the laws were passed in a hurry.

#ARBITRATION & CONCILIATION (AMENDMENT BILL) 2021

The Lok Sabha has passed the **Arbitration and Conciliation (Amendment) Bill, 2021 to check misuse by "fly-by-night operators"** who take advantage of the law to get favourable awards by fraud.

- The Bill **intends to replace the Arbitration and Conciliation (Amendment) ordinance** issued in November, 2020.

Features of the Bill:

- Qualifications of Arbitrators: **It** does away with the qualifications of the arbitrators **under** 8th Schedule **of the Arbitration and Conciliation Act, 1996 which specified that the arbitrator must be:**

- **An advocate under the Advocates Act, 1961 with 10 years of experience, or an officer of the Indian Legal Service. The qualifications for accreditation of arbitrators are** proposed to be prescribed by regulations to be framed by an arbitration council **to be set up.**

- Unconditional Stay on Awards: **If the Award is being** given on the basis of a fraudulent agreement or corruption, **then the court can grant an unconditional stay as long as an appeal under Section 34 of the arbitration law is pending.**

Benefits of the Amendment

- Would bring about **parity among all the stakeholders** in the arbitration process.
- All the stakeholders get an opportunity to seek unconditional stay on enforcement of arbitral awards where the agreement or contract is "induced by fraud or corruption".
- Checking misuse of the provisions under Arbitration and Conciliation Act, 1996 **would save the taxpayers' money** by holding those accountable who siphoned off of them unlawfully.

Drawbacks in the bill

- India already lags behind when it comes to the enforcement of international contracts and agreements. The Bill can further hamper the spirit of **Make in India** campaign and deteriorate rankings in **Ease of Doing Business Index.**
- India aims to become a hub of domestic and international arbitration. Through the implementation of these legislative changes, resolution of commercial disputes could take longer duration now onwards.

Arbitration Council of India

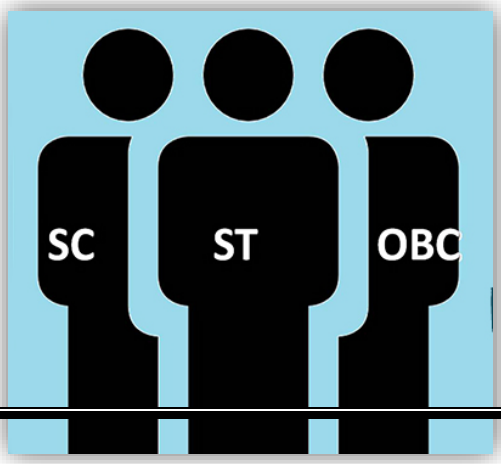
- **Constitutional Background:** The Constitution of India, **Article 51,** India is obliged to endeavour to:
- Foster respect for international law and treaty obligations in the dealings of organised peoples with one country.
- Encourage settlement of international disputes by arbitration. ACI is a step in realisation of this constitutional obligation.
- **Objective:** The Arbitration and Conciliation (Amendment) Act, 2019 seeks to establish an **independent body** called the **Arbitration Council of India (ACI)** for the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms.
- **Arbitration:** It is a process in which disputes resolve between the parties by appointing an independent third party who is an impartial and neutral person called arbitrator. Arbitrators hear both the parties before arriving at a solution to their dispute.
- **Conciliation:** It is a process in which disputes resolve between the parties by appointing a conciliator who helps (amicable) the disputed parties to arrive at a negotiated settlement. Settling the dispute without litigation, it is an informal process. He does so by lowering tensions, improving communication, interpreting issues, providing technical help.

Composition of the ACI:

- The ACI will consist of a Chairperson who is either:
  - **A Judge of the Supreme Court; or**
  - **A Judge of a High Court; or**
  - **Chief Justice of a High Court;** or
  - **An eminent person with expert knowledge in conduct of arbitration.**
- **Other members** will include an eminent arbitration practitioner, an academician with experience in arbitration, and government appointees.
- **Appointment of Arbitrators:** Under the Act, the Supreme Court and High Courts may designate arbitral institutions, which parties can approach for the appointment of arbitrators.
- For **international commercial arbitration,** appointments will be made by the institution designated by the Supreme Court.
- For **domestic arbitration,** appointments will be made by the institution designatedby the concerned High Court.
- In case there are **no arbitral institutions available**, the Chief Justice of the concerned High Court may maintain a panel of arbitrators to perform the functions of the arbitral institutions.
- An application for appointment of an **arbitrator is required to be disposed of within 30 days.**

REVIEWING RESERVATIONS (INDRA SAWHNEY CASE)

Supreme Court asked states whether they were in **favour of extending caste-based reservation** beyond the 50 per cent ceiling set by it in **Indra Sawhney case** (nine-judge bench) of 1992.



Background of the issue

- The apex court framed this as one among the several questions to be decided while **considering the constitutional validity of a 2018 Maharashtra law**

- **2018 Maharashtra law gave 16% reservation to the Maratha community** in jobs and admissions by terming them socially and educationally backward class in the state.

- This law got past the scrutiny of the **Bombay High Court in June 2019** but the quantum of reservation stood reduced to 12 per cent in admissions and 13 per cent in jobs.

- **With the introduction of this Act**, the reservation benefits in the state exceeded 50 per cent. In addition to Maharashtra, there are three other states – **Tamil Nadu, Haryana and Chhattisgarh** – which have passed similar laws exceeding the 50 per cent reservation mark and are under challenge in the Supreme Court.

Presently, Constitution Bench will decide on the following broad issues

- **Relook into Reservation limits:** Whether **the Indira Sawhney case judgement of 1992** requires a relook by larger bench in the light of subsequent Constitutional amendments, judgements and changed social dynamics of the society.

- **Marata Quota Law:** The **SC will have to decide whether the Marata Quota law** is covered by the exemption of "exceptional circumstances" **by which reservations can cross the 50% mark.**

- **Federalism and Power of States:** The SC will have to also examine whether 102nd Constitutional Amendment Act deprives a state legislature of its power to enact a legislation to identify socially and economically backward classes within the state to confer quota benefits to them.

- **Article 342A:** The **article 342A** (power of the President to notify a particular caste as **Socially and Educationally Backward Class (SEBC)**. The SC will look into whether the Article 342A abrogates a State's power to legislate for or classify "any backward classes of citizens" and thereby, affects the federal policy/structure.

Background for Indra Sawhney Case

- **Mandal Commission**: The **Second Backward Classes Commission**, famously known as the **Mandal Commission,** was set up in 1979 to determine the criteria for defining socially and educationally backward classes.

- **OBC Reservation:** The **Mandal report identified 52 percent of the population at that time as 'Socially and Economically Backward Classes' (SEBCs)** and recommended 27 per cent reservation for SEBCs in addition to the previously existing 22.5 per cent reservation for SC/STs.

- **Challenged in Court:** The then V **P Singh led-Central government wanted to implement the Mandal Commission report in 1990,** but it was challenged in the Supreme Court. The verdict in the Indira Sawhney case, which came up before a nine-judge bench, was delivered in 1992.

- **Celling on Reservation with exceptions:** The pronouncement in the Indra Sawhney v Union of India fixed a cap of 50 percent reservation. The Court had, however, said that the cap can be breached under exceptional circumstances.

- **IR Coelho Case:** In this case, SC delivered a unanimous verdict upholding the authority of the judiciary to review any law, which destroy or damage the basic structure as indicated in fundamental rights, even if they have been put in 9th schedule.

102nd Constitution Amendment Act

- **102nd Constitution Amendment Act, 2018** provides constitutional status to the **National Commission for Backward Classes (NCBC**) (earlier it was statutory body).

- 102nd Constitution Amendment Act **inserted new Articles 338 B and 342 A.**

- Article 338B provides authority to NCBC to examine complaints and welfare measures regarding socially and educationally backward classes.

- **Article 342 A** empowers President to specify socially and educationally backward classes in various states and union territories. He can do this in **consultation with Governor of concerned State**. However, law enacted by Parliament will be required if list of backward classes is to be amended.

#MARATHA RESERVATIONS STRUCK DOWN: SC

Recently, the **Supreme Court (SC)** declared a **Maharashtra law** which provides **reservation benefits to the Maratha** community, taking the quota limit in the State in excess of 50%, as unconstitutional.

Background:

- **2017:** A 11-member **commission headed by Retired Justice N G Gaikwad** recommended **Marathas should be given reservation** under **Socially and Educationally Backward Class (SEBC).**
- **2018:** Maharashtra Assembly passed a Bill proposing **16% reservation for Maratha community.**
- **2018:** The Bombay High Court while upholding the reservation pointed out that instead of 16% it should be **reduced to 12% in education and 13%in jobs.**
- **2020:** The SC stayed its implementation and **referred the case to Chief Justice of India for a larger bench.**

Current Ruling:

- **Violation of Fundamental Rights:** A separate reservation for the Maratha community violates **Articles 14 (right to equality) and 21 (due process of law).**
- Reservation breaching the 50% limit **will create a society based on "caste rule".**
- The Maratha reservation of 12% and 13% (in education and jobs) had **increased the overall reservation ceiling to 64% and 65%, respectively.**
- In the ***Indira Sawhney judgment*** **1992**, SC had categorically said **50% shall be the rule**, only in certain **exceptional and extraordinary situations** for bringing far-flung and remote areas' population into mainstream said 50% rule can be relaxed.

No Further Benefits:

- **Appointments made under the Maratha quota** following the Bombay High Court judgment endorsing the State law **would hold**, but **they would get no further benefits.**
- **Deprived States of the Power to Identify SEBCs:** There will **only be a single list of SEBC with respect to each State and Union Territory notified by the President** of India, and that **States can only make recommendations** for inclusion or exclusion, with any subsequent change to be made only by Parliament.
- The Bench unanimously **upheld the constitutional validity** of the **102nd Constitution Amendment** but differed on the question whether it affected the power of states to identify SEBCs.
- **Direction to NCBC:**
- Asked the **National Commission for Backward Classes (NCBC)** to expedite the **recommendation of SEBCs** so that the President can publish the notification containing the list of SEBCs in relation to States and Union Territories expeditiously.

102nd Amendment Act of 2018

- It introduced **Articles 338B and 342A in the Constitution.**
- **Article 338B** deals with the newly established National Commission for Backward Classes.
- **Article 342A** empowers the President to specify the socially and educationally backward communities in a State.
- It says that it is for the Parliament to include a community in the Central List for socially and backward classes for grant of reservation benefits.

Mandal Commission

- In exercise of the powers conferred by **Article 340** of the Constitution, the President appointed a backward class commission in December 1978 under the chairmanship of B. P. Mandal.

- The commission was formed to determine the criteria for **defining India's "socially and educationally backward classes"** and to recommend steps to be taken for the advancement of those classes.
- The Mandal Commission concluded that India's population consisted of approximately 52 percent OBCs, therefore **27% government jobs should be reserved** for them.
- The commission has developed **eleven indicators** of social, educational, and economic backwardness.
- Apart from identifying backward classes among Hindus, the Commission has also identified **backward classes among non-Hindus** (e.g., Muslims, Sikhs, Christians, and Buddhists.
- It has generated an all-India other backward classes (OBC) list of 3,743 castes and a more underprivileged "depressed backward classes" list of 2,108 castes.
- In the **Indra Sawhney Case of 1992,** the Supreme Court while upholding the 27 percent quota for backward classes,struck down the government notification reserving 10% government jobs for economically backward classes among the higher castes.
- Supreme Court in the same case also upheld the principle that the combined reservation beneficiaries should **not exceed 50 percent** of India's population.
- The **concept of 'creamy layer'** also gained currency through this judgment and provision that reservation for backward classes should be confined to initial appointments only and not extend to promotions.
- Recently, the Constitutional **(103rd Amendment)** Act of 2019 has provided 10% reservation in government jobs and educational institutions for the "economically backward" in the unreserved category.
- The Act **amends Articles 15 and 16** of the Constitution by adding clauses empowering the government to provide reservation on the basis of economic backwardness.
- This 10% economic reservation is over and above the 50% reservation cap.

Constitutional Provisions Governing Reservation in India

- **Part XVI** deals with reservation of SC and ST in Central and State legislatures.
- **Article 15(4) and 16(4)** of the Constitution enabled the State and Central Governments to reserve seats in government services for the members of the SC and ST.
- The Constitution was amended by the **Constitution (77th Amendment) Act,** 1995 and a new **clause (4A)** was inserted in **Article 16** to enable the government to provide reservation in promotion.
- Later, **clause (4A)** was modified by the Constitution (85th Amendment) Act, 2001 to provide consequential seniority to SC and ST candidates promoted by giving reservation.
- Constitutional 81st Amendment Act, 2000 inserted **Article 16 (4 B)** which enables the state to fill the unfilled vacancies of a year which are reserved for SCs/STs in the succeeding year,

thereby **nullifying the ceiling of fifty percent reservation** on total number of vacancies of that year.

- **Article 330 and 332** provides for specific representation through reservation of seats for SCs and STs in the Parliament and in the State Legislative Assemblies respectively.
- **Article 243D** provides reservation of seats for SCs and STs in every Panchayat.
- **Article 233T** provides reservation of seats for SCs and STs in every Municipality.
- **Article 335** of the constitution says that the claims of STs and STs shall be taken into consideration constituently with the maintenance of efficacy of the administration.

#STATES PLANS TO PASS LAWS TO END 'LOVE JIHAD'

With Uttar Pradesh leading the way, a **set of states** now plan to pass laws to end what they call "love *jihad*".

What is "Love Jihad"?

- Love Jihad, also called Romeo Jihad, is an alleged activity under which young Muslim boys and men are said to reportedly target young girls belonging to **non-Muslim communities for conversion to Islam by feigning love.**
- There is no legal sanction to **political terms such as 'love jihad'.**
- Even though **individual reports have spread, all official investigations in India** launched in 2009, 2010, 2012 and 2014 have found no evidence of the activity

Uttar Pradesh Prohibition of Unlawful Religious Conversion Law, 2020

- **Immediate Context**: The immediate context for such a law is a recent Allahabad High Court judgment which in a recent ruling declared that the conversion for the sole purpose of marriage as "null and void".
- **Prohibition on forceful or fraudulent Conversion:** The proposed law says that those found guilty of conversion done though "misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means" in contravention of the law would face jail term of one to 5 years, and a minimum fine of Rs 15,000.
- **Marriage for the sole purpose of unlawful conversion:** The law also says that a marriage will be declared "shunya" (null and void) if the "sole intention" of the same is to "change a girl's religion".
- **Cognizable and non-bailable offences:** Notwithstanding anything mentioned in the Code of Criminal Procedure, 1973; all the offences under this law shall be cognizable and non-bailable and triable by the Court of Sessions.

- **Approval for Conversions**: Anyone wanting to convert into another religion would have to give it in writing to the District Magistrate at least two months in advance. Upon receiving the information, the said officer will conduct an enquiry to real intention, purpose and cause of the proposed religious conversion. If the proposed conversion contradicts the provisions of this law, it would be illegal and void.

- **Burden of Proof**: It would be the responsibility of the one going for the religious conversion to prove that it is not taking place forcefully or with any fraudulent means. In case, any violation is found under this provision, then one faces a jail term from 6 months to 3 years and fine of minimum Rs 10,000.

Criticism of UP Law

- **Interference with Personal Liberty:** The law plans to outlaw religious conversion which may take place for marriage purposes. This interferes with personal liberty.

- **Curtails Freedom of Religion**: Based on Articles 25 to 28, an Indian citizen is guaranteed the freedom to practise any religion of his or her choice. The above UP law curtails this freedom. The State wants to intervene not only in the citizens' private relationship with God, but also in the choice of their spouse.

- **Against Article 21** (Right to Life): The right to marry a person of one's choice is integral to Article 21 of the Constitution. Intimacies of marriage lie within a core zone of privacy, which is inviolable and the choice of a life partner, whether by marriage or outside it, is part of an individual's 'personhood and identity'.
- **Against Right to Privacy:** In SC's K.S. Puttaswamy v UOI (2017) judgment, it read the "right of choice of a family life" as a fundamental right. The regressive law limits the choice of a prospective spouse such that this spouse would only be one approved by the State.

- **Laws exist to deal with Inter-Faith Marriages:** The domain of matrimony is occupied by separate laws governing weddings that take place under religious traditions, and the Special Marriage Act that enables a secular marriage.

#RATAN TATA V. CYRUS MISTRY CASE

- **Cyrus Mistry's family Shapoorji Pallonji (SP) owns 18.46% equity capital in Tata Sons,** the main **holding company of Tata Group. 66%** of Tata Sons is owned by Tata Trusts, currently controlled by Ratan Tata, the group's former Chairman
- **December 2012–Appointment of Mistry:** Cyrus Mistry is appointed Chairperson of Tata Sons Limited.
- **October 2016- Removal of Mistry:** He is sacked from the post of Executive Chairperson by most of the Board of Directors.
- **February 2017– Case filed against Tata Sons:** The shareholders vote for Mistry's removal from the board of Tata Sons during an extraordinary general meeting. Mistry, subsequently, files a suit under various sections of the Companies Act, 2013, alleging oppression and mismanagement in Tata Sons.
- **July 2018- Tatas win in NLCT:** The **Mumbai Bench of the National Company Law Tribunal (NCLT)** dismisses **Mistry's plea against Tata Sons.** While rejecting his allegations, NCLT rules that the Board of Directors are competent enough to remove him as Chairman. The tribunal also states that it found no merit in the arguments on mismanagement in Tata Sons.
- **December 2019– Tatas lose in NCLAT:** The National Company Law Appellate Tribunal (NCLAT) overturns the NCLT judgment, and states that Mistry's removal as Chairman of Tata Sons was illegal.
- NCLAT also found that the affairs of Tata Sons were conducted in a manner prejudicial and oppressive to its minority shareholders, namely **Cyrus Mistry & his family companies, as well as to the interests of the company itself.**

- **January 2020- Appeal to SC: Tata Sons and Ratan Tata challenge the NCLAT decision** before the Supreme Court saying that the **NCLAT verdi**ct undermined Corporate Democracy and the rights of its Board of Directors.

- Subsequently, the Supreme Court stays the **NCLAT judgment to reinstate Mistry as the executive chairman of Tata Sons.**
- **September 2020:** The Supreme **Court restrains Mistry's Shapoorji Pallonji Group** from pledging its shares in Tata Sons to raise funds.

What were the allegations/ concerns raised by Mistry?

- **Rights of Minority Shareholder's oppressed:** SP Group had also alleged that Tata Sons was being run and operated in a manner which was "oppressive" and "prejudicial" to the rights of minority shareholders. It was alleged that the removal of Cyrus Mistry meant oppression of minority shareholders.

- **Article 75 of the Articles of Association of the Tata Group.** Article 75 gives the company the right to purchase shares from a minority or a small shareholder at a fair market value.

- Fearing that the Tata Group may use it to try and buyout the SP Group, the latter urged the company law tribunals and the Supreme Court to not allow Article 75 to be used.

- **Decisions disproportionately impacted minority shareholders**: Apart from this, the Mistry camp had also alleged that the Tata Group had taken several commercial decisions which did not yield the desired result and thus resulted in more loss for the minority shareholders than the majority shareholders.

What was the decision of the Supreme Court?

- Discussing the rights of minority and small shareholders and their importance in the board of a company, the Supreme Court held that minority shareholders or their representatives are not automatically entitled to a seat on the **private company's board like a small shareholder's representative.**
- This meant **that SC set aside NCLAT** order and dismissed the appeals of Mistry & SP Group.
- **Small Vs Minority Shareholder:** SC noted that the provisions contained in the 2013 Companies Act only protects the rights of small shareholders of listed companies by asking such companies to have on their board at least one director elected by such small shareholders.
- **Small shareholders, according to the Companies Act**, is a shareholder or group of shareholders who hold shares of nominal value of not **more than Rs 20,000.**
- **Since the Mistry family** and the SP Group were not "small" shareholders, but "minority shareholders", there was no statutory provision which gave them the "right to claim proportionate representation," on the board of Tata Sons.
- SC noted that the right to claim proportionate representation is not available for the SP Group even contractually, in terms of the Articles of Association.
- **Neither SP Group nor CPM (Cyrus Pallonji Mistry)** can request the **Tribunal (NCLAT)** to rewrite the contract, by seeking an amendment of the Articles of Association. The Articles of Association, as they exist today, are **binding upon SP Group and CPM.**

Impact of the Judgement

- The Supreme Court has not negated the concept of quasi-partnership or a contractual agreement.
- Though the judgment does not directly impact the right of minority shareholders, it does mean that going ahead, such shareholders will have to **ensure that they have a contract with the majority shareholders** or the promoters of the company to ensure they have adequate representation on the board.

#SC ON APPOINTMENT OF CBI DIRECTOR

A writ petition has been filed in the **Supreme Court** seeking the appointment of a **regular Central Bureau of Investigation (CBI) Director.**

- The Director of the CBI is appointed as per section 4A of the **Delhi Special Police Establishment Act of 1946.**

Director of CBI:

- The CBI is headed by a Director.
- The Director of CBI as Inspector General of Police, Delhi Special Police Establishment, is responsible for the administration of the organisation.
- With the enactment of **CVC Act, 2003,** the superintendence of Delhi Special Police Establishment vests with the Central Government to **save investigations of offences under the Prevention of Corruption Act, 1988,** in which, the superintendence vests with the **Central Vigilance Commission.**
- The Director of CBI has been provided **security of two-year tenure** in office by the CVC Act, 2003.

The **CBI** was set up in 1963 by a resolution of the **Ministry of Home Affairs.** Now, the CBI comes under the administrative control of the Department of Personnel and Training (DoPT) of the **Ministry of Personnel, Public Grievances and Pensions.** The establishment of the CBI was recommended by the **Santhanam Committee on Prevention of Corruption (1962–1964).** The CBI is **not a statutory body.** It derives its powers from the **Delhi Special Police Establishment Act, 1946.** The CBI is the **main investigating agency of the Central Government.** It also provides **assistance** to the Central Vigilance Commission and Lokpal. It is also the **nodal police agency** in India which coordinates investigation on **behalf of Interpol Member countries.**

Appointment of Directors

- The **Lokpal and Lokayuktas Act (2013)** amended the **Delhi Special Police Establishment Act (1946)** and made the following changes with respect to appointment of the Director of CBI:
- The Central Government shall appoint the Director of CBI on the recommendation of a **three-member committee** consisting of the **Prime Minister as Chairperson,** the **Leader of Opposition in the Lok Sabha** and the **Chief Justice of India** or **Judge of the Supreme Court nominated by him.**
- Later, the **Delhi Special Police Establishment (Amendment) Act, 2014** made a change in the composition of the committee related to the appointment of the Director of C.B.I.
- It states that where there is **no recognized leader of opposition** in the Lok Sabha, then the **leader of the single largest opposition party** in the Lok Sabha would be a member of that committee.

Conclusion

- Instead of a **regular appointment,** the government has recently appointed an interim/acting CBI Director. The interim appointment through an executive order **was not envisaged in the statutory scheme of the 1946 Act.**
- The **premier investigative agency** should function independently outside the influence of the Executive or political powers. The **Supreme Court** in the past has made a significant effort to enhance the **functional autonomy of the CBI** and limit the extent of executive discretion in the matter of appointment of this key functionary. It must make sure that there is a mechanism to ensure that the process of selection of **CBI Director is completed one or two months in advance of the retirement of the incumbent.**

#WHAT IS 'SAVE LAKSHADWEEP CAMPAIGN"

- **'Save Lakshadweep' campaign** has been trending since May 23, 2021, with support from prominent politicians and celebrities amid the protests in the union territory of Lakshadweep over the last few days. Protests have broken out since the administrative reforms, deemed as anti-people by the protesters, were announced by the **island's administrator Praful Patel in January 2021.**

What is Save Lakshadweep Campaign?

- **#SaveLakshadweep campaign** has been trending on social media in support of the protestors in Lakshadweep over the new reforms passed by the **island's administrator Praful Patel.**
- Many prominent personalities, celebrities, sportspersons have been actively coming forward on Twitter and Facebook **to support the 'Save Lakshadweep' campaign.**

What are the new administrative reforms being protested?

- **Praful Patel, Lakshadweep's administrator** got the additional charge of Lakshadweep in December 2020 and announced new administration reforms in January 2021 which have been deemed anti-people by the locals.
- Patel introduced Anti-social Activities Regulation Bill, 2021, also called the **Goonda Act, under which police can arrest anyone for up to one year.**
- Another is the **Lakshadweep Development Authority Regulation 2021 (LADR)** that gives the administration to relocate or remove islanders from their properties for any developmental or town-planning activity. The LADR draft bill also affords the administration the power to retain the property of islanders.
- The new reforms also introduced liquor shops on the island to boost tourism, which so far was restricted on the **island in the wake of the majority Muslim population inhabiting the island.**
- The reforms also state that people with more than two kids cannot **contest any panchayat elections** on the island. Non-vegetarian food from the mid-day meals has been scrapped and a beef ban has imposed.
- Regarding COVID-19 protocols, **now a negative RT-PCR test** would be enough to enter Lakshadweep compared to a mandatory 14-day quarantine earlier in place.

Why did protests intensify in Lakshadweep?

- The protests got a wider reach when **Kerala MP Elamaram Kareem** wrote to President Ram Nath Kovind alleging that several casual laborers lost their jobs in the wake of new reforms.
- Further, sheds and equipment of fishermen were demolished without any warning by the new administration on the account of violating the Coast Guard Act.
- The new administration also said that islanders should rely on Mangalore **(Karnataka) rather than Beypore (Kerala) for freight transit.**
- **People from Lakshadweep** also have been taking it to social media writing they need help. The new administration has been destroying our land, tweeted a **local resident of Lakshadweep.**

DRAFT LAKSHADWEEP DEVELOPMENT AUTORITY REGULATION, 2021

- The latest **Draft Lakshadweep Development Authority Regulation, 2021, for the creation of a Lakshadweep Development Authority (LDA)** is widely resented by the people of **Lakshadweep.**

Constitution of Lakshadweep Development Authority:

- It **empowers the government, identified as the administrator, to constitute Planning and Development Authorities** under it to plan the development of any area identified as having "bad layout or obsolete development".
- The authority would be a **body corporate with a government-appointed chairman**, a town planning officer and three 'expert' government nominees besides two local authority representatives.
- These **authorities are to prepare land use maps, carry out zonation for type of land use** and indicate areas for proposed national highways, arterial roads, ring roads, major streets, railways, tramways, airports, theatres, museums etc.
- Only **cantonment areas are exempted** from this.
- **Defines 'Development':** It defines development **as the carrying out of building, engineering, mining, quarrying or other operations in, on, over or under land**, the cutting of a hill or any portion thereof or the making of any material change in any building or land or in the use of any building or land.

Fees for Changing Zones:

- It stipulates that islanders must **pay a processing fee for zone changes.**
- It implies that **localities would be required to pay fees to gain approval to alter zones as per the development plan**, as well as fees for permission to develop their own land.
- **Penalties:** It establishes penalties such as **imprisonment** for obstructing the development plan's work or workers.

People's Concern:

- **Real Estate Interests:** People suspect that this might have been issued **at the behest of 'real estate interests' seeking to usurp the small holdings** of property owned by the islanders, a majority of them **(94.8% as per the 2011 census)** belonging to the **Scheduled Tribes (ST).**
- Proposals to bring **real estate development concepts** such as **'transferable development rights'** to the island have raised people's fear of **forced migration en masse.**
- **Forcible Relocation & Eviction:**
- It vests such powers with the authority that it can prepare comprehensive development plans for any area and **relocate people regardless of their will.**
- It **provides for forcible eviction**, puts the **onus on the owner** to develop his holding as per the plan prepared by the authority as also to heavily penalise them in the event of non-compliance.
- **Destruction of Culture:** The island community is a **close-knit group with families living in close proximity.** The regulation will destroy the way of life practised by them for generations.
- **Ecological Concerns:**
- It **is neither ecologically sustainable nor socially viable** and the **people's representatives were not consulted before drafting it.**

Lakshadweep

- **About:** India's **smallest Union Territory**, Lakshadweep is an archipelago consisting of 36 islands with an area of 32 sq km.
- It is directly under the **control of the Centre through an administrator.**
- There are **three main group of islands:**
- Amindivi Islands
- Laccadive Islands
- Minicoy Island.
- **Amindivi Islands** are the **northernmost** while **Minicoy island** is the **southernmost.**
- All are tiny islands of **coral origin (Atoll)** and are **surrounded by fringing reefs.**
- The **Capital is Kavaratti** and it is also the principal town of the UT.
- **Pitti island**, which is uninhabited, has a bird sanctuary.

Population:

- More than 93% of the population who are indigenous, are Muslims and majority of them **belong to the Shafi School of the Sunni Sect.**
- **Malayalam** is spoken in all the islands **except Minicoy** where people **speak Mahl** which is written in Divehi script and is spoken in Maldives also.
- The **entire indigenous population has been classified as Scheduled Tribes** because of their economic and social backwardness. There are **no Scheduled Castes** in this Union Territory.
- The **main occupation** of the people is fishing, coconut cultivation and coir twisting. Tourism is an emerging industry.
- **Organic Agricultural Area:** Recently, the entire Lakshadweep group of islands has been declared as an **organic agricultural area** under the **Participatory Guarantee System (PGS) of India.**

#ARTICLE 311(2) OF THE CONSTITUTION

- Recently, **a police officer was dismissed** from the service **by Mumbai Police Commissioner under Article 311(2) (b) of the Constitution** without a departmental enquiry.
- **Assistant Police Inspector, Sachin Waze** was terminated from the police service without a departmental enquiry on May 11, 2021, after an order issued under **Article 311 (2) (b) of the Indian Constitution by the Mumbai Police Commissioner Hemant Nagrale.**
- **Sachin Waze, a 1990-batch officer of the Maharashtra cadre**, was suspended after his arrest by the National Investigation Agency (NIA) in the case of an SUV with explosives found near **Mukesh Ambani's house (also known as the Ambani terror scare case) and the murder of Mansukh Hiran.**
- On February 25, 2021, an SUV filled with explosives was found parked near the residence of Mukesh Ambani in Mumbai. A few days later, businessman Mansukh Hiran was found dead in Thane.
- During that period, the **Maharashtra Anti-Terrorism Squad (ATS)** was looking into the crime before NIA took over it. During the same time, Waze got transferred to the Special Brand of Mumbai police.
- However, upon an investigation of his alleged involvement in both the **Ambani terror scare case and the murder of Mansukh Hiran,** the Special Branch prepared a report with inputs from the Maharashtra ATS and submitted it to the Mumbai Police Commissioner.
- The **Mumbai Police Commissioner Nagrale** issued an order terminating **Sachin Waze** from police services under **Article 311 (2) (b) without a departmental enquiry.**

Article 311 in context of Sachin Waze's Case

- **Article 311 (2) (b) clause of Article 311 of the Indian Constitution** has been invoked by the Mumbai Police Commissioner Hemant Nagrale in Waze's case.
- Nagrale stated in writing that he is vested with the authority and is satisfied that it is not reasonably practical to conduct a departmental enquiry against Waze.
- **Can Sachin Waze challenge the dismissal under Article 311 (2) (b)?**
- **Yes, Sachin Waze** can approach the **Maharashtra Administrative Tribunal**. A government employee or a civil servant dismissed under **Article 311 (2) (b) can approach the State Administrative Tribunals or Central Administrative Tribunal or the Courts.**

Article 311:

- **Article 311 (1)** says that **no government employee** either of **an all India service** or **a state government** shall be dismissed or **removed by an authority subordinate to the own** that appointed him/her.
- **Article 311 (2)** says that **no civil servant shall be dismissed or removed or reduced in rank except after an inquiry** in which s/he has been informed of the charges and given a reasonable opportunity of being heard in respect of those charges.
- **People Protected under Article 311: The members of**
- Civil service of the Union,
- All India Service, and
- Civil service of any State,
- People who hold a civil post under the Union or any State.
- The protective safeguards given under Article 311 are **applicable only to civil servants, i.e. public officers.** They are **not available** to **defence personnel.**

Exceptions to Article 311 (2):

- **2 (a)** - Where a person is dismissed or removed or reduced in rank on **the ground of conduct which has led to his conviction on a criminal charge;** or
- **2 (b)** - Where the **authority empowered** to dismiss or remove a person or to reduce him in rank **is satisfied** that for some reason, to be recorded by that authority in writing, it is **not reasonably practicable to hold such inquiry;** or
- **2 (c)** - Where the President or the Governor, as the case may be, is satisfied that **in the interest of the security of the State**, it is not expedient to hold such inquiry.
- **Other Recent Case Related to Use of Article 311(2) Subsections:**
- Recently, the **Jammu & Kashmir** administration set up a **Special Task Force (STF)** to **scrutinise cases of employees suspected of activities requiring action under Article 311(2)(c).**

- **Three government employees**, including **two teachers**, were fired using the Article.

Options to Dismissed Employee:

- The government employee dismissed under these provisions can approach either tribunals like the **state administrative tribunal** or **Central Administrative Tribunal (CAT)** or the **courts.**
- **Other Related Constitutional Provisions:**
- **Part XIV** of the Constitution of India deals with Services under The Union and The State.
- **Article 309** empowers the Parliament and the State legislature to **regulate the recruitment, and conditions of service of persons appointed**, to public services and posts in connection with the affairs of the Union or of any State respectively.
- According to **Article 310**, except for the provisions provided by the Constitution, a civil servant of the Union works at the pleasure of the President and a civil servant under a State works at the pleasure of the Governor of that State **(English doctrine of Pleasure).**
- But this **power of the Government is not absolute.**
- **Article 311** puts **certain restrictions** on the absolute power of the President or Governor for dismissal, removal or reduction in rank of an officer.

#DATA PROTECTION IN INDIA: WHATSAPP POLICY

Recently, the **Ministry of Electronics and IT (MeitY)** has sent a notice to **WhatsApp** asking it to withdraw a controversial update to its privacy policy which might be a **threat to Data Protection of Indians.**

About the Issue:

- According to **WhatsApp's updated privacy policy**, **users would no longer be able to stop the app from sharing data** (such as location and number) **with its parent Facebook** unless they delete their accounts altogether.
- Its privacy updates are **designed to make the business interactions** that take place on its platform easier while also personalising ads on Facebook. That is how it will have to make its money.
- According to the **Government**, the messaging app **discriminates against Indian users vis-à-vis users in Europe** on the matter of a choice to opt-out of the new privacy policy.
- WhatsApp users in Europe can opt-out of the new privacy policy owing to the **laws in the European Union (EU) called the General Data Protection Regulation (GDPR)**, which shield them from sharing data from Facebook or grant them the power to say no to WhatsApp's new terms of service.

Data Protection (Meaning):

- Data protection is the **process of safeguarding important information from corruption, compromise or loss.**
- **Data** is the large collection of information that is stored in a computer or on a network.
- The **importance** of data protection **increases as the amount of data created and stored continues to grow at unprecedented rates.**
- **Need:** According to the **Internet and Mobile Association of India (IAMAI)'s Digital in India report 2019**, there are about **504 million active web users and India's online market is second only to China.**
- Large collection of information about individuals and their online habits has become an **important source of profits.** It is also a **potential avenue for invasion of privacy** because it can reveal extremely personal aspects. Companies, governments, and political parties find it **valuable** because they can use it to find the most convincing ways to advertise to you online.

Laws for Data Protection across the Globe:

- European Union: The primary aim of the **General Data Protection Regulation (GDPR)** is to **give individuals control over their personal data.**
- **US:** It has **sectoral laws to deal with matters of digital privacy** such as the US Privacy Act, 1974, Gramm-Leach-Bliley Act etc.

Initiatives in India:

- IT Act, 2000: It provides for **safeguard against certain breaches in relation to data from computer systems.** It contains provisions to prevent the unauthorized use of computers, computer systems and data stored therein.

Personal Data Protection Bill 2019:

- The Supreme Court maintained the **right to privacy as a fundamental right in the landmark decision of K.S. Puttaswamy v. Union of India 2017** after which the Union government had appointed **Justice B.N. Srikrishna Committee** for proposing skeletal legislation **in the discipline of data protection.**
- The Committee came up with its report and draft legislation in the form of the **Personal Data Protection Bill, 2018.**
- In 2019, Parliament again revised the Bill and much deviation from the 2018 Bill was evident. The new Bill was named as **Personal Data Protection Bill, 2019.**
- The purpose of this Bill is to provide for protection of privacy of individuals relating to their Personal Data and to establish a Data Protection Authority of India for the said purposes and the matters concerning the personal data of an individual.
- **Concerns Related to Personal Data Protection Bill 2019:**
- It is like a two-sided sword. While it **protects the personal data of Indians by empowering them with data principal rights**, on the other hand, it **gives the central government with exemptions** which are against the principles of processing personal data.

- The **government can process even sensitive personal data when needed**, without explicit permission from the data principals.

#PERSONAL DATA PROTECTION BILL

- The pandemic has forced more people to participate in the digital economy that has brought focus into the **Personal Data Protection Bill drafted by Union Government.**

- Unfortunately, the **existing data protection regime in India does not meet this standard.** Current data protection regime falls short of providing effective protection to users and their personal data.

Data Protection – Issues

- **Increasing Breaches:** The **number of personal data breaches from major digital service providers** has increased. Robust data protection regimes are necessary to prevent such events and protect users' interests.

- **Misuse of Terms & Conditions**: Entities could override the protections in the regime by taking users' consent to processing personal data under broad terms and conditions. This is problematic given that users might not **understand the terms and conditions or the implications of giving consent**.

- **Data Privacy:** Frameworks emphasise data security **but do not place enough emphasis on data privacy**.

- **Checks on Government Collection of Data:** The data protection provisions under the existing IT Act also do not apply to government agencies. This creates a **large vacuum for data protection when governments are collecting and processing large amounts of personal data.**

- The regime seems to have become antiquated and inadequate in addressing risks emerging from new developments in data processing technology.

How does the Personal Data Protection Bill, 2019 address above issues?

It could play a big role in providing robust protections to users and their personal data.

- **Applicable to all:** The Bill seeks to apply the **data protection regime to both government and private entities across all sectors.**

- **Covers Data Privacy**: The **Bill seeks to emphasise data security and data privacy**. While entities will have to maintain security safeguards to protect personal data, they will also have to fulfill a set of data protection

obligations and transparency and accountability measures that govern how entities can process personal data to uphold users' privacy and interests.

- **Autonomy to Users:** The Bill seeks to give users a set of rights over their personal data and means to exercise those rights.

- **Independent Regulator**: The Bill seeks to create an independent and **powerful regulator known as the Data Protection Authority (DPA**). The DPA will monitor and regulate data processing activities to ensure their compliance with the regime. More importantly, the DPA will give users a channel to seek redress when entities do not comply with their obligations under the regime.

Concerns with the Bill

- **Several provisions in the Bill create cause for concern about the regime's effectiveness.** These provisions could contradict the objectives of the Bill by giving wide exemptions to government agencies and diluting user protection safeguards.

- Central government can exempt any government agency from complying with the Bill. Government agencies will then be able to process personal data without following any safeguard under the Bill. This could create severe privacy risks for users.

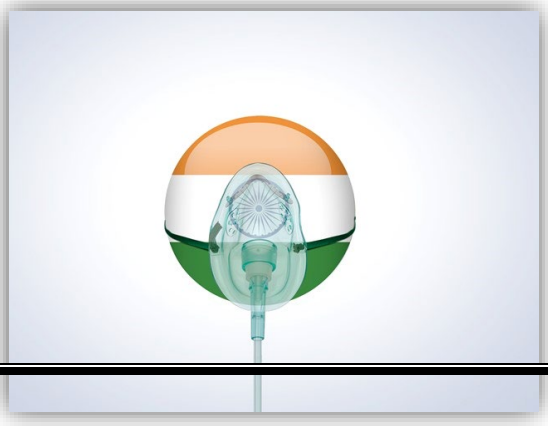
- Users could find it difficult to **enforce various user protection safeguards (such as rights and remedies)** in the Bill. The Bill threatens legal consequences for users who withdraw their consent for a data processing activity.

- This could discourage users from withdrawing consent for processing activities they want to opt out of. Additional concerns also **emerge for the DPA as an independent effective regulator that can uphold users' interests.**

#OXYGEN CRISIS IN INDIA

- **With the COVID-19** crisis deepening every day, the **shortage of Oxygen** has become a major hindrance in **India's fight against Coronavirus.**

- But as Central and State Governments scramble to procure enough oxygen for hospitals, demand for Oxygen Concentrators has also raised exponentially.



- With **rumours and speculations around Oxygen running short in hospital**, several people have started thinking about buying these devices for home or group usage in times of crisis, without any medical understanding or prescription for the same.

- Therefore, it is important now to understand what Oxygen Concentrators are and how are they different from Oxygen Cylinders that are usually used to supply medical oxygen.

- **Medical Oxygen**: The second wave of the COVID-19 pandemic has severely affected the lungs of patients making them gasp for breath.

- So to save the lives of patients, medical oxygen is used, which is **'high-purity oxygen' used for medical treatment such as, life support system, during anaesthesia, etc**. The process to make medical oxygen takes place in the plant, where the air is cooled, and oxygen is distilled.

About Oxygen Concentrators.

- An oxygen concentrator draws in ambient air which is about 78 per cent Nitrogen and 21 per cent Oxygen and the **remaining 1 per cent other gases.**

- The **concentrator filters the room air through a sieve and releases back the nitrogen back into the atmosphere**.

- The oxygen retained in the concentrator is 90-95 per cent pure**. It is compressed and given through a cannula**. A pressure valve on the concentrators helps to monitor the supply which ranges from 1-10 litres per minute.

- A report by WHO in 2015 stated that oxygen concentrators have been designed as such that they can provide a **continuous supply of oxygen for 24 hours, 7 days a week. They can work for up to 5 years or more.**

Are Oxygen Concentrators beneficial for COVID-19 patients?

- Experts say that the 90-95 per cent pure oxygen generated by these concentrators is useful for **COVID-19 patients with mild to moderate symptoms** with oxygen saturation levels above 88 per cent.

- However, the patients in the **ICU ward benefit only from 99 per cent Liquid Medical Oxygen**. The oxygen from concentrators is not advisable for them.

- Also, experts do not recommend attaching the concentrators to multiple patients as it poses a danger of cross-infection.

How are Oxygen Concentrators different from Oxygen Cylinders

- Oxygen Concentrators are portable whereas oxygen cylinders are required to be stored and transported in

cryogenic tankers.

- **Oxygen Concentrators** work on the power supply to draw in room air and generate oxygen while oxygen cylinders require refilling.
- Oxygen concentrators are **only capable of generating 5-10 litres of oxygen per minute** hence not suitable for patients with a **critical need for 40-50 litres of oxygen per minute.**
- **What is the cost and maintenance of Concentrators versus Cylinders?**
- Oxygen Concentrators are **available for Rs 40,000 – 90,000 while oxygen cylinders cost around Rs 8,000 – 20,000.**
- **Oxygen Concentrators** incur an additional cost of electricity and routine maintenance while oxygen cylinders involve refilling and transportation costs.
- The **Liquid Medical Oxygen (LMO)** crisis during the **second wave of Covid surge** has been precipitated by a shortage of tankers and the daunting logistics of transportation from distant locations.

- **Liquid Medical Oxygen:** It is high purity oxygen suitable for use in the human body. So, it is used for medical treatments.
- This oxygen **provides a basis for virtually all modern anaesthetic techniques, restores tissue oxygen tension** by increasing the oxygen availability, **aids cardiovascular stability, etc.**
- **The World Health Organisation** includes this on their **List of Essential Medicines.**
- According to the **Drug Prices Control Order, 2013**, LMO is placed under the **National List of Essential Medicines (NLEM).**
- **LMO Production in India:** India has a **daily production capacity** of at least **7,100 Metric Tonnes (MT)** of oxygen, including for industrial use.
- Due to the crisis, the production has been increased to **8,922 MT.** And approximately daily **sale is 7,017 MT.**
- The domestic production is expected to **cross 9,250 MT** per day by the end of April 2021.
- Therefore, **India appears to be producing sufficient oxygen** to meet the current need.

Reasons for the Crisis:

- **Distance of Production Plants:** Most of the LMO plants are located in the east, leading to long transportation hauls and a turnaround time of at least 6-7 days for each tanker. Add to this the problem of states holding up tankers on the way.

- **Limited Tankers:** At present, India has 1,224 LMO tankers with a cumulative capacity of 16,732 MT of LMO. This is grossly inadequate because at any given point, there are only 200 tankers in transit to meet a demand of 3,500-4,000 MT.
- **Companies not Buying Cryogenic Tankers:** Cryogenic tankers cost around Rs. 50 lakh each. Companies are not buying these tankers because once this wave is over, that investment will turn into losses.
- **Cryogenic Tankers:** These are tankers which store medical oxygen at -180 degrees C, have double-skin vacuum-insulated containers, including an inner vessel made of stainless steel.
- **Leakage and Irrational Use:** In the past, the Health Ministry repeatedly demanded hospitals to reduce **wastage and unnecessary oxygen use in Hospitals.** Industrial experts also raised **concerns over possible leakages in hospital pipelines that supply oxygen.**
- **Black marketing of oxygen cylinders** is another issue.

Government Initiatives:

- Oxygen Express: **Trains to transport LMO and oxygen cylinders across the country have been started to fight the ongoing crisis.**
- Disaster Management Act 2005: **The Ministry of Home Affairs** invoked Disaster Management Act, 2005 (DM Act) **and ordered** free inter-state movement of oxygen carrying vehicles.
- Restarting Plants: **The government is restarting many closed plants to increase the supply of LMO,** for example**, Sterlite plant in Tamil Nadu will be** reopened for 4 months to provide oxygen supply.
- Use of Air Force: **To speed up the transportation,** Indian Air Force (IAF) **is airlifting empty oxygen tankers and taking them to industrial units that have switched to producing medical grade oxygen.**
- Oxygen Enrichment Unit (OEU): **It is developed by scientists of** Council of Scientific and Industrial Research**-National Chemical Laboratory (CSIR-NCL), and will** help reduce the requirement of ventilators and oxygen cylinders **in homecare, villages and remote places. Oxygen enrichment units have special significance in view of the** Covid-19 pandemic. **Patient** recovery can be faster with supplemental oxygen in early stages.

Ensuring an uninterrupted supply of oxygen:

- The **Home Secretary** while commenting on the latest order referred that the various measures taken so far are to ensure the uninterrupted supply of oxygen across India.

- He added that it was important to restrict the industrial usage of oxygen in order to ensure that the medical oxygen is available without any interruption. Necessary instructions in this regard were also issued on April 22, 2021, for **restricting the use of medical oxygen.**

- The Central Government after reviewing the oxygen supply situation decided that the use of liquid oxygen, including the existing stock, will be allowed for medical purposes only and also that all the manufacturing units must maximize their production of liquid oxygen.

Supreme Court Task force for allocation of medical oxygen

- The Supreme Court of India in an order passed on May 6, 2021, constituted a 12-member national task force that would assist with formulating a methodology for the **allocation of medical oxygen to states and union territories during the COVID-19 pandemic.**

- The Supreme Court has constituted the national task force at a time when the **country is experiencing a shortage of medical oxygen to handle the mounting cases of COVID-19**. Hence, the Court devised the national task force in the spirit to set up an 'effective and transparent mechanism' and 'streamline the process' for allocating medical oxygen to all states and union territories.

- **A bench of Justices M R Shah and DY Chandrachud** informed that the Union Cabinet Secretary will serve as the convenor of the national task force. The Secretary of the Union Ministry of Health and Family Welfare will serve as an ex-officio member of the task force.

- **Sandeep Budhiraja, Max Healthcare, RandeepGuleria, AIIMS, and two IAS officers –** one each from the Centre and the Delhi government, will also be part of the task force.

12-member National Task Force: Key highlights

- The task force will help the government with strategies and inputs to solve the challenges of the pandemic on a professional and transparent basis.

- The task force will constitute sub-groups or committees within each state and UT that will consist of an officer of the State or UT government (not below the rank of Secretary to the State Govt.), an officer of the Centre (not below the rank of Additional/Joint Secretary), **two medical doctors in the State/UT, and a representative from the Petroleum and Explosives Safety Organization (PESO).**

- The sub-groups or committees within each state and UT will audit to confirm if the supplies by the Centre reached the concerned state or UT, assess the efficiency of the distribution networks regarding supplies for healthcare institutions and hospitals, and determine if the available stocks are being dispersed in an effective, professional, and transparent mechanism.

- The task force will not interfere or scrutinize the decisions of the doctors but only ensure the **successful**

distribution of the supplies and oxygen to every state or UT.

- The tenure of the task force has been set six months initially. The Centre has been asked to nominate two nodal officers who will be responsible for logistics, communication, and arrangement of virtual meetings of the task force.

- The task force will be provided with complete and **real-time data from the Centre and State governments**. All the healthcare institutions and hospitals are advised to cooperate with the task force.

Oxygen surplus state, Kerala: EDITORIAL

- The **Covid-19 second wave** has disrupted the demand supply scenario of medical oxygen in several parts of the country. **However, Kerala seems to be sitting pretty**, thanks to the efforts of **Petroleum and Explosive Safety Organisation (PESO)** in augmenting capacity and plugging leakages.

- The achievement has been made possible through concerted efforts to set up oxygen plants and maintain the existing ASU (Air Separation Unit) plants and manufacturing plants both in public and private sectors over the past one year.

- **Allaying fears of an oxygen scarcity, RVenugopal, Deputy Chief Controller of Explosives, PESO, Nodal officer (Medical Oxygen Monitoring),** Kerala & Lakshadweep) said the State has a stock of 430 tonneswith a daily supply of 140 tonnes. Currently, there are 11 Air Separation Units (ASU) for filling cylinders from gaseous oxygen and there is capacity to spare. The total production capacity of Kerala is 204.75 tonnes a day. About 52 tonnes is needed for Covid treatment and for non-covid care 45 tonnes, he said.

- **PESO has approved the trial run for one more ASU at Palakkad that has a production capacity of 260 m3/hour gaseous oxygen and a liquid medical oxygen storage of 40 kilolitres.** Besides, the agency has given approval for another ASU plant in Thiruvananthapuram to produce 130 m3/hour gaseous oxygen and a liquid medical oxygen storage of 33 kl, which would start functioning shortly, he said.

- It may be recalled that Kerala had to d**epend on the neighbouring Tamil Nadu and Karnataka for liquid oxygen requirements.** In 2019, PESO granted licence to set up a 149-tonne plant of Inox India to ensure regular supply of oxygen in the State.

- "It was an online news report highlighting the shortage of medical oxygen in Italy in the Covid times last year that prompted me to augment the capacity of oxygen plants in Kerala", Venugopal told "I had convened a meeting with liquid oxygen manufacturers in March 2020 to step up production so as to meet any emergencies eventualities with the spread of virus. They were asked to provide daily reports on the production and storage status including that of private hospitals.

- The public sector Kerala Minerals and Metals Ltd which set up a plant in September 2020 is producing seven tonnes per day, Bharat Petroleum Corporation Limited-Kochi Refinery produces three tonnes in association with Air Products, while the Cochin Shipyard produces another 5.45 tonnes, he added.

- Industry sources pointed out that that **BPCL has offered to enhance its medical oxygen supply by converting its gaseous oxygen into medical cylinders**. As it requires high pressure compressors, the petroleum marketing company is studying the feasibility of the project and once it is materialised, the supply of oxygen to the State would be further increased.

#ARTCLE 244A OF THE CONSTITUTION

The **demand for an autonomous state within Assam** has been raised by some of the sections of the society in Assam under the provisions of **Article 244A of the Constitution.**

Background:

- In the **1950s, a demand for a separate hill state** arose around certain sections of the **tribal population of undivided Assam.**
- After prolonged agitations, **Meghalaya gained statehood in 1972.**
- The leaders of the **KarbiAnglong and North Cachar Hills** were also part of this movement. They were given the **option to stay in Assam or join Meghalaya.**
- They **stayed back** as the centre promised them more powers, including **Article 244 (A).**
- In the 1980s, the demand for more power/autonomy took the form of a movement with a number of Karbi groups resorting to violence.
- It soon became **an armed separatist insurgency** demanding full statehood.

Sixth Schedule

Article 244(A) allows for creation of an 'autonomous state' within Assam in certain tribal areas. It also envisages **creation of a local legislature or Council of Ministers or both** to carry out local administration. It was inserted into the Constitution by the **Twenty-second Constitution Amendment Act, 1969.Article 244(A)** accounts for **more autonomous powers to tribal areas than the Sixth Schedule.** Among these the most important power is the control over law and order. In Autonomous Councils under the Sixth Schedule, they do not have jurisdiction of law and order.

- The Sixth Schedule of the Constitution provides for the **administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram** to safeguard the rights of the tribal population in these states.
- This special provision is provided under **Article 244 (2) and Article 275 (1) of the Constitution.**
- In **Assam,** the hill districts of **Dima Hasao, KarbiAnglong and West Karbi and the Bodo Territorial Region are under this provision.**
- The **Governor is empowered to increase or decrease the areas** or change the names **of the autonomous districts.** While **executive powers of the Union extend in Scheduled areas** with respect to their administration in **fifth schedule**, the **sixth schedule areas remain within executive authority of the state.**
- The **Fifth Schedule** of the Constitution deals with the **administration and control of scheduled areas and scheduled tribes** in any state **except the four states** of Assam, Meghalaya, Tripura and Mizoram.
- The whole of the normal administrative machinery operating in a state do not extend to the scheduled areas.
- At present, **10 States** namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana have Fifth Schedule Area.
- Tribal habitations in the states of Kerala, Tamil Nadu, Karnataka, West Bengal, Uttar Pradesh and Jammu & Kashmir have not been brought under the Fifth or Sixth Schedule.
- The **acts of Parliament or the state legislature do not apply** to autonomous districts and autonomous regions or apply with specified modifications and exceptions.
- The Councils have also been endowed with wide **civil and criminal judicial powers,** for example establishing village courts etc. However, the jurisdiction of these councils is subject to the jurisdiction of the concerned High Court.

#JUSTICE NV RAMANA TO TAKE CHARGE AS NEXT CJI

- **Chief Justice of India (CJI) SA Bobde** in a letter to the central government has recommended appointing senior-most Supreme Court Judge **Justice NV Ramana as the next Chief Justice of India.**
- The **Chief Justice of India SA Bobde** is scheduled to retire from the position on April 23rd. Hence, it is likely that Justice N V Ramana will take over as the **48th Chief Justice of India** on April 24th.

About Justice NV Ramana?

- **Justice NV Ramana** is currently the **senior-most judge in the Supreme Court of India**. He was previously serving as the **Delhi High Court Chief Justice and acting Chief Justice of Andhra Pradesh High Court.**
- He was elevated as **a Supreme Court Judge on February 17, 2014**. With a term of **8 years in the Supreme Court of India**, he is now next in line to **be Chief Justice of India** with effect from 24 April 2021 after the retirement of **Justice Sharad Arvind Bobde.**
- **Justice NV Ramana** is due to retire on August 26, 2022. He has previously served as the **President of the**

Andhra Pradesh Judicial Academy.

- He had enrolled as an advocate in February 1983 and **specialised in criminal, service, constitutional and inter-state River laws.** He has also served as a panel counsel for **several Government Organizations.**
- Overall, he has practiced in the Andhra Pradesh HC, Central and Andhra Pradesh Administrative Tribunals as well as the **Supreme Court in Civil, Criminal, Constitutional, Labour, Service and Election matters**. He has been credited for presiding over path-breaking judgments in constitution, tax, arbitration and criminal law.
- He has previously headed SC benches that dealt with matters such as fast-tracking of trials in cases against legislators and **restrictions imposed in Jammu and Kashmir after the abrogation of Article 370 of the Constitution.**
- In March 2020, a bench headed by him rejected proposals to send petitions **challenging the abrogation of Article 370 to a larger bench.**
- He had also headed the constitution bench that had rejected the curative petitions filed by the **convicts in the December 2012 gangrape and murder case, finally paving the way for their execution.**
- As for his personal life, he was born into a humble family of agriculturalists in **Ponnavaram Village, Krishna district in undivided Andhra Pradesh.**

#CHALLENGES AHEAD OF NEW CJI

- Justice is the concept of making decisions based on moral rightness, rationality, equity and fairness and the onus of delivering timely justice to the citizens of a country lies majorly on the shoulders of the supreme judge of the country.
- In India, this role is played by the **Chief Justice of India (CJI)**; the **'Paterfamilias'** of the Judiciary and the **'Master of the Roster'.**
- Recently, Justice Nuthalapati Venkata Ramana (**NV Ramana**), the most senior judge of the **Supreme Court** after former CJI, **Justice S A Bobde**, took his oath as the 48th CJI.
- Designated as CJI at such a time when India is going through a major crisis due to Covid-19 pandemic, a lot of potential challenges stand in the path of fulfilling his oath of delivering timely justice to all.

The Chief Justice of India and the Judges of the **Supreme Court (SC)** are appointed by the President under **clause (2)** of **Article 124** of the Constitution. As far as the CJI is concerned, the **outgoing CJI recommends his successor.** The Union Law Minister forwards the recommendation to the Prime Minister who, in turn, advises the President. SC in the **Second Judges Case (1993),** ruled that the senior most judge of the Supreme Court should alone be appointed to the office of the CJI. The **Supreme Court collegium is headed by the Chief Justice of India** and comprises four other senior most judges of the court. The collegium system is the **system of appointment and transfer of judges** that has evolved through judgments of the Supreme Court (Judges Cases), and not by an Act of Parliament or by a provision of the Constitution.

Current Issues with the Judiciary

- **Inefficiency of the Supreme Court:** The SC has not only **stopped being the protector of the fundamental and other constitutional rights,** but has also failed to act as the guardian of the rule of law.
- In the context of politically sensitive cases involving citizens, opposition parties, and activists, the Court has virtually deferred to the executive instead of stepping in to restore constitutional rights and values in letter and spirit.
- The recently retired, 47th CJI was perhaps the only Chief Justice to have not made a single recommendation of a judge to be appointed to the Supreme Court.
- **Low Judge to Population Ratio:** The judge-population ratio in the country which stands at only **20 judges per million people** is not very appreciable.
- While for the other countries, the ratio is about 50-70 judges per million people.
- **Pendency and Vacancies in High Courts:** The numbers both in respect of pendency of cases and vacancies in the High Courts are quite concerning — a backlog of **over 57 lakh cases, and a vacancy level of 40%.**
- The Madras High Court has 5.8 lakh cases against a relatively low level of vacancy at 7%.
- As many as 44% of the posts in the Calcutta High Court are vacant, but the cases in arrears stand at 2.7 lakh.
- **Recruitment Delays:** The posts in the judiciary are not filled up as expeditiously as required. For a country as populous as 135 million, the **total strength of judges is only around 25000.**
- Almost 400 posts are vacant in the high courts.
- Around 35% of the posts are lying vacant in the lower judiciary.
- **Inadequate Representation of Women and Minorities:** The **apex court** currently has only **one woman as judge** despite the fact that virtually half the population comprise women and gender sensitive cases have also seen a sharp rise.
- The Supreme Court has only one Muslim judge and no Sikh, Buddhist, Jain or a person from tribal community as a judge.
- **Lesser Strict Actions Taken for Judicial Delay:** Though there is widespread acknowledgement of the problem of judicial delay, there is only limited effort within the judiciary taken to understand, through research, the nuances of the problems and ways to resolve it.

Challenges for the New CJI

- **Keeping the court functioning during the present unprecedented crisis** due to the Covid-19 Pandemic.
- **Revamping the administrative machinery of the apex court** and streamlining the functioning of the collegium.
- Strengthening the judicial infrastructure and **clearing the massive backlog of cases.**
- The Supreme Court will have around 13 vacancies during Justice Ramana's tenure as many judges are due to retire by the end of 2021.
- The biggest challenge will be to **streamline the appointment process in the Supreme Court as well as in the High Courts** which have been struggling with the pendency of a huge number of cases due to a lack of judges.
- The possibility of courts reopening for physical hearing, at such a time, looks bleak now, given the massive spike in Covid-19 infections in the Capital.

- The **hearings of courts will have to be digitised which is further criticised by lawyers** on multiple instances due to technical faults.

Conclusion

- **Role of the Supreme Court:** A country of a billion+ population needs its highest court to stand for the people as the power of the judiciary, just like the legislature and the executive, comes from the people of the country.
- The SC is expected to **seek strict accountability from the legislature and executive** and any infraction of the Constitution and laws must be corrected.
- The Supreme Court collegium of the five senior-most judges should act more transparently and be made more accountable in order to inspire confidence and trust in the judiciary.
- **Role of CJI:** The new Chief Justice must **stringently introspect and review the actions of his immediate predecessors,** free himself of the bias in constituting benches and allocating cases and take concrete steps to revitalise the administration of justice. Only then will the rule of law be restored and the Constitution served.
- **Streamlining the Appointment System:** The vacancies must be filled without any unnecessary delay.
- A proper time frame for the appointment of judges must be laid down and the recommendations must be given in advance.
- The Constitution of the **All India Judicial Services (AIJS)** is also an important factor which can definitely help India establish a better judicial system.
- **Fair Representation of All:** Women and the minority communities deserve a fair representation in the Apex Court.
- The collegium is duty-bound to diversify the Bench to give adequate representation to all sections of society so that public trust, which is the greatest strength of the judiciary, could be restored.
- The Chief Justice of India on account of the position he holds as the Paterfamilias of the judicial fraternity is bound to deliver undelayed and unbiased justice to its citizens in order to restore and maintain the faith of the people in the judicial system of India.

#CAIRN ARBITRATION CASE (PCA, HAGUE)

The **Permanent Court of Arbitration** at **The Hague** has ruled that the Indian government was wrong in applying retrospective tax on Cairn. In its ruling, the **international arbitration court said** that Indian government must pay roughly **Rs 8,000 crore** in damages to **Cairn.**

What is the dispute all about?

- The dispute between the **Indian government and Cairn relates to retrospective taxation.**

- Before 2006 (**listing in BSE**), the India operations of Cairn Energy were owned by a company called **Cairn India Holdings Ltd (CIHL)** incorporated in Jersey, UK.

- **Cairn India Holdings Ltd (CIHL)** was a fully owned subsidiary of Cairn **UK Holdings (CUHL**), in turn a fully owned subsidiary of **Cairn Energy (CPLC).**

- At the time of the IPO (2006), the ownership of the India assets was transferred from Cairn **UK Holdings** to a new company, **Cairn India Ltd (CIL).**

- In 2006, **Cairn India Ltd. (CIL)** acquired the entire share capital of Cairn India Holdings (CIHL) from Cairn UK Holdings (CUHL).

- In exchange, 69 per cent of the shares in Cairn India were issued to Cairn UK Holdings (CUHL). **Hence, Cairn Energy (CPLC), through Cairn UK Holdings (CUHL), held 69 per cent in Cairn India.**

- Later, in 2011, **Cairn Energy sold** Cairn India to mining billionaire **Anil Agarwal's Vedanta group,** barring a minor stake of 9.8 per cent. It wanted to sell the residual stake as well but was barred by the I-T department from doing so. The government also froze **payment of dividend by Cairn India to Cairn Energy.**

- In 2012, government introduces retrospective tax amendment in finance bill and in 2014 the **IT authorities launches** a retrospective tax probe into transactions **undertaken prior to IPO.**

What were the objections by IT Authorities?

- The **Income Tax authorities** then contented that **Cairn UK** had made capital gains and slapped it with a tax demand of Rs 24,500 crore.
- Owing to different interpretations of capital gains, the company refused to pay the tax, which prompted cases being filed at the **Income Tax Appellate Tribunal (ITAT) and the High Court.**
- While Cairn had lost the case at **ITAT**, a case on the valuation of capital gains is still pending before the Delhi High court.
- In 2015, **Cairn's claim** was brought under the terms of the **UK-India Bilateral Investment Treaty,** the legal seat of the tribunal was the Netherlands, and the proceedings were under the registry of the **Permanent Court of Arbitration.**

What has the arbitration court said?

- The **Permanent Court of Arbitration at The Hague** has maintained that the Cairn tax issue is not a tax dispute but a tax-related investment dispute and, hence, it falls under its jurisdiction.
- **India's demand** in past taxes, it said, was in breach of fair treatment under the **UK-India Bilateral Investment Treaty.**
- The tribunal ordered the government to return the value of shares it had sold, dividends seized and tax refunds withheld to recover the tax demand.
- The government was asked to **compensate Cairn** "for the total harm suffered" together with interest and cost of arbitration.

Government response in the case

- The Solicitor General of India has opined that an "**arbitral tribunal can't render a law passed by a sovereign Parliament ineffective"**.
- While senior government functionaries have asserted India's sovereign taxation rights "can't be subservient to bilateral investment treaties," **PM Modi had assured global investors that "concerns over retrospective taxation would be taken care of".**
- Also, Finance minister **Nirmala Sitharaman** has on record said that, "**we won't use retrospective taxation for income generation".**
- The verdict came barely three months after India lost **arbitration to Vodafone Plc** over the retrospective tax legislation amendment.

#GNCT OF DELHI AMENDMENT ACT COMES INTO FORCE

The **Government of National Capital Territory (GNCT) of Delhi (Amendment) Act, 2021**, which gives **primacy to the Lieutenant Governor (L-G) over the elected government** in the city, has **come into force.**

Provisions of the GNCT of Delhi (Amendment) Act 2021:

- It **amended the Sections 21, 24, 33 and 44 of the 1991 Act.** States that the **"government"** in the National Capital Territory of Delhi **meant the Lieutenant-Governor** of Delhi.
- It **gives discretionary powers to the L-G** even in matters where the Legislative Assembly of Delhi is empowered to make laws.
- It **seeks to ensure that the L-G is "necessarily granted an opportunity"** to give her or his opinion before any decision taken by the Council of Ministers (or the Delhi Cabinet) is implemented.
- It **bars the Assembly or its committees from making rules** to take up matters concerning day-to-day administration, or to conduct inquiries in relation to administrative decisions.

69th Amendment Act, 1992 added two new Articles 239AA and 239AB under which the Union Territory of Delhi has been given a special status. **Article 239AA** provides that the Union Territory of Delhi be called the National Capital Territory of Delhi and its administrator shall be known as Lt. Governor. It also **creates a legislative assembly for Delhi** which can make laws on subjects under the State List and Concurrent List **except on these matters:** public order, land, and police. It also **provides for a Council of Ministers for Delhi** consisting of not more than 10% of the total number of members in the assembly. **Article 239AB** provides that the **President may by order suspend the operation of any provision of Article 239AA** or of all or any of the provisions of any law made in pursuance of that article. This provision **resembles Article 356 (President's Rule).**

Criticism:

- The latest amendment will **greatly reduce the efficiency and timeliness of the Delhi government** by making it imperative for it to hold consultations with the L-G even when a situation demands urgent action.
- Significantly, the **L-G is not obliged to give his opinion to the State government within a time frame.** Critics argue that the L-G could politically exploit these unbridled powers to hamper the government's administrative work and thus turn the political tides against the incumbent if he so desires. It is **against the spirit of 'Federalism."**

Union Government's Stand:

- It is in **keeping with the Supreme Court's July 2018 ruling** on the ambit of powers of the L-G and the Delhi government following several headliner controversies between the two.
- The purported fair objectives of the Act, include **enhancing public accountability and easing out technical ambiguities** related to everyday administration.

- This will **increase administrative efficiency of Delhi** and will **ensure better relationship between the executive and the legislator.**

Background

- **Enactment of GNCTD Act:** The **GNCTD Act was enacted in 1991** to **"supplement provisions of the Constitution** relating to the Legislative Assembly and a Council of Ministers for the National Capital Territory of Delhi".
- It **enabled the process of an elected government in Delhi.**
- The **Supreme Court had in the past appreciated the 1991 developments**, stating that the real purpose behind the **Constitution (69th Amendment) Act, 1991** is to establish a democratic set-up and representative form of government wherein the majority has a right to embody their opinions in laws and policies pertaining to the NCT of Delhi subject to the limitations imposed by the Constitution.

Point of Friction:

- However, over the years, there was **friction between the Chief Minister and the Lieutenant Governor (L-G)** over power-sharing.
- The focal point of these conflicts was that **in case of a difference between the L-G and the Council of Ministers on any matter,**The **matter was to be referred to the President** by the L-G for his decision,
- And **pending such a decision** the **L-G was empowered to take any action** on the matter as he deemed right.

Judgement of the Supreme Court:

- In the **Government of NCT of Delhi vs Union of India and Another in 2018** case, the SC held that:
- The **government was not under obligation to seek the concurrence of the L-G** on its decisions and
- That **any differences between them should be resolved keeping in view the constitutional primacy of representative government** and cooperative federalism.
- Essentially, the SC judgment **made it extremely difficult for the L-G to refer such matters to the President.**

#UK'S NOD FOR EXTRADITION OF NIRAV MODI

Recently, the UK's Home Department has approved the **extradition of Nirav Modi, a diamond merchant** to India in connection with the Rs. 13,758-crore Punjab National Bank (PNB) fraud.

- India and the UK entered into an **extradition treaty in 1992.**
- Extradition is the process by which one state, upon the request of another, affects the **return of a person for trial**

for a crime punishable by the laws of the requesting state and committed outside the state of refuge.

- The **Supreme Court** defined extradition as the **delivery on the part of one State to another of those whom it is desired to deal with for crimes of which they have been accused** or convicted and are justifiable in the Courts of the other State.
- Extraditable persons include those charged with a crime but not yet tried, those tried and convicted who have escaped custody, and those convicted in absentia.

Extradition Law in India:

- In India, the extradition of a fugitive criminal is governed under the **Indian Extradition Act, 1962.**
- This is **for both extraditing persons to India and from India** to foreign countries.The **basis of the extradition** could be a treaty between India and another country.
- At present India has an **Extradition treaty** with more than 40 countries and Extradition agreement with 11 countries.

Extradition Treaty:

- **About:Section 2(d)** of The Indian Extradition Act 1962 defines an 'Extradition Treaty' as a Treaty, Agreement or **Arrangement made by India with a Foreign State, relating to the extradition of fugitive criminals** which extends to and is binding on India. Extradition treaties are traditionally bilateral in character.

Principles Followed:

- The extradition **applies only to such offences which are mentioned in the treaty.**It applies the **principle of dual criminality** which means that the offence sought to be an offence in the national laws of requesting as well as requested country.
- The requested country must be satisfied that there is a **prima facie case made against the offender.**
- The extradition should be made **only for the offence for which extradition was requested.**The accused must be provided with a **fair trial.**
- **Nodal Authority:Consular, Passport and Visa Division** of the Ministry of External Affairs, administers the Extradition Act and it processes incoming and outgoing Extradition Requests.
- **Implementation:**Extradition **can be initiated in the case of under-investigation, under-trial and convicted criminals.**
- In cases under investigation, abundant precautions have to be exercised by the law enforcement agency to ensure that it is in possession of prima facie evidence to sustain the allegation before the Courts of Law in the Foreign State.

Fraud oversight wing of RBI

- The **Reserve Bank of India (RBI)** is in the process of putting together an **exclusive wing for banking fraud oversight.**
- This wing will have teams for meta-data processing and analysis, artificial intelligence analysis units, as well as proactive risk assessment cells.

- **Strength and Participation: The banking fraud oversight wing** may comprise **up to 600 officers** along with experts from the private sector.
- The RBI would hire fresh people, including **industry veterans** to lead the teams.
- **Training:**Experts from the **private sector working** in all these domains will be brought in to train the new members in the fraud oversight wing.
- These training sessions will be repeated **every year in the initial years.**
- These new teams will also be given training in the **latest technologies,** so that they can also **prevent another Yes Bank kind of event.**

Background

- The RBI had been mulling ways to proactively detect such frauds after the loan fiasco at **Punjab National Bank.**
- The bank fraud to the tune of Rs 11,450 crore involving diamond merchant Nirav Modi. It came to light that the company, in connivance with retired employees of PNB, got at least 150 LoUs, allowing Nirav Modi Group to defraud the bank and many other banks who gave loans to him.
- As part of that plan, the banking regulator in 2019 had moved to create a **separate cadre** of its own employees who would work in **regulation and oversight sections.**
- However, the working conditions were very strict and anyone opting for that cadre **would not be allowed to leave for three years.** To overcome this problem, the RBI sought to create a fraud oversight wing.

#KULBHUSAN JADHAV CASE: ICJ

Pakistan has urged India to appoint a lawyer to represent death row convict Kulbhushan Jadhav to implement the verdict of the **International Court of Justice (ICJ).**

About the Kulbhushan Jadhav Case:

- KulbhushanJadhavwas **sentenced to death by a Pakistani military court** on charges of espionage and

terrorism **in April 2017.**

- **India approached the ICJ against Pakistan for denial of consular access (Vienna Convention)** to Jadhav and challenging the death sentence.
- **ICJ ruled in July 2019** that **Pakistan must undertake an "effective review and reconsideration" of the conviction** and sentence of Jadhav, and also **grant consular access to India** without further delay.
- It **had asked Pakistan to provide a proper forum for appeal** against the sentence given to Jadhav by the military court.
- **Implications of 'Effective Review and Reconsideration' for India:**
- Effective review and reconsideration is a phrase which is different from 'review' as one understands in a domestic course.It **includes giving consular access and helping Jadav in preparing his defence.**
- It means that **Pakistan has to disclose the charges and also the evidence** which it has been absolutely opaque about uptill now.
- Pakistan **would also have to disclose the circumstances in which Jadhav's confession was extracted** by the military.
- It implies that **Jadhav will have a right to defend** whichever forum or court hears his case.

Vienna Convention:

- The **Vienna Convention on Consular Relations** is an international treaty that defines consular relations between independent states.
- A consul (who is not a diplomat), is a representative of a foreign state in a host country, who works for the interests of his countrymen.
- **Article 36 of the Vienna Convention** states that foreign nationals who are arrested or detained in the host country must be given notice without delay of their right to have their embassy or consulate notified of that arrest.
- If the detained foreign national so requests, the police must fax that notice to the embassy or consulate, which can then verify the detained person.
- The notice to the consulate can be as simple as a fax, giving the person's name, the place of arrest, and, if possible, something about the reason for the arrest or detention.

International Court of Justice: ICJ

- ICJ was established in 1945 by the United Nations **charter and started working in April 1946.**

- **It is the** principal judicial organ of the United Nations**, situated at the** Peace Palace in The Hague (Netherlands).

- **Unlike the six principal organs of the United Nations, it is the only one not located in New York (USA).**

- **It settles legal disputes between States and gives advisory opinions in accordance with international law, on legal questions referred to it by authorized United Nations organs and specialized agencies.**

- **It has 193 state parties and current President is Ronny Abraham.**

Background

- **Article 33 of the United Nations Charter** lists the negotiation, enquiry, mediation etc. methods for the pacific settlement of disputes between States. Some of these methods involve the services of third parties.
- Historically, **mediation and arbitration** preceded **judicial settlement**. The former was known in ancient India and the Islamic world, whilst numerous examples of the latter can be found in ancient Greece, in China, among the Arabian tribes, in maritime customary law in medieval Europe, and in Papal practice.
- The modern history of **international arbitration**:
- **The first phase** is generally recognized as dating back from the so-called **Jay Treaty of 1794** between the United States of America and Great Britain.
- The **Alabama Claims arbitration in 1872** between the United Kingdom and the United States marked the start of a second, even more decisive, phase.
- The **Hague Peace Conference of 1899,** convened on the initiative of the Russian Czar Nicholas II, marked the beginning of a third phase in the modern history of international arbitration.