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AUGUST 2021

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FEATURES CONSTITUTIONAL LAW

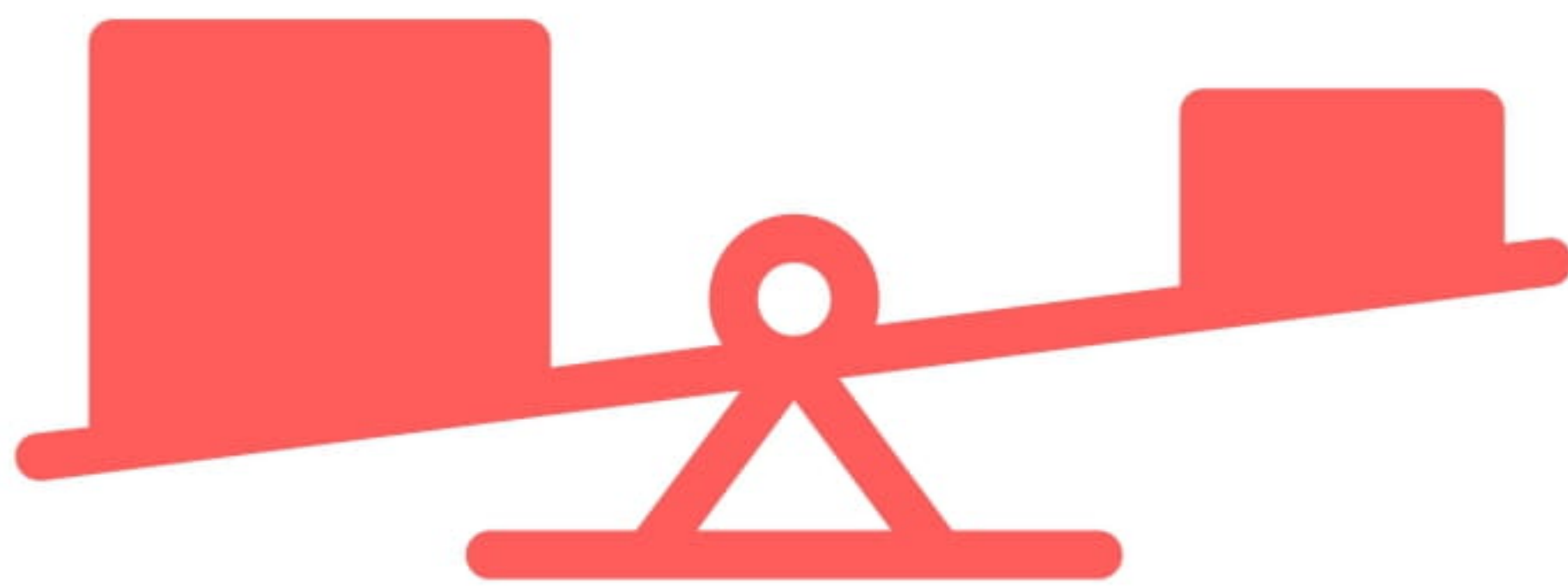
127TH CONSTITUTIONAL AMDT.

The Bill amends the Constitution to allow states and union territories to prepare their own list of socially and educationally backward classes.

INTERNATIONAL LAW

INDIA ALL SET FOR UNSC PRESIDENCY TERM

India is all set to assume the Presidency of UN Security Council and ready to host signature events in UNSC related to three major fields – maritime security, peacekeeping and counter- terrorism.



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CONSTITUTIONAL LAW

LS CLEARS BILL RESTORING STATES RIGHTS TO SPECIFY OBC GROUPS

PARTIES GET 48 HOURS TO PUBLISH CANDIDATES' CRIMINAL RECORDS

PREVENTIVE DETENTION ONLY TO FORESTALL PUBLIC DISORDER

FAITH AND MARRIAGE: ON ANTI- CONVERSION LAWS

PLEA IN SUPREME COURT AGAINST TRIBUNAL REFORMS ACT

CRIMINALISING WELFARE ISSUES | KUSH KALRA VS UNION OF INDIA [JULY 2021]

RIGHT TO EDUCATION ENTITLEMENTS TO BE PAID THROUGH CASH TRANSFERS

CHILD HAS RIGHT TO USE MOTHER'S SURNAME

CBI, POLICE IGNORING JUDGES COMPLAINTS: SC [INDEPENDENCE OF JUDICIARY]

MASS SURVEILLANCE | PEGASUS ISSUE

FARMERS HAVE RIGHT TO PROTEST BUT STIR SHOULD NOT HINDER TRAFFIC: SC

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UNSC UNANIMOUSLY ADOPTS SIGNIFICANT PRESIDENTIAL STATEMENT, RESOLUTION ON PEACE KEEPING AS INDIA PRESIDES OVER COUNCIL

NEARLY FOUR LAKH PEOPLE NEWLY DISPLACED IN AFGHANISTHAN BY CONFLICT SINCE START OF YEAR

FATHER MOVES SC TO EXTRADITE WOMAN WHO JOINED ISIS

TALIBAN SEIZE ANOTHER CITY IN AFGHANISTAN

LAW OF CRIMES

NO FURTHER SENTENCE AFTER LIFE TERM

NOD FOR CONTINUATION OF FAST TRACK SPECIAL COURTS

CONTRACT MARRIAGES ARE CASES OF CHEATING

CONTEMPORARY LEGAL DEVELOPMENTS

APEX COURT QUESTIONS STATES ON CASES UNDER SECTION 66A

THE COMMISSION FOR AIR QUALITY MANAGEMENT IN THE NATIONAL CAPITAL REGION AND ADJOINING AREAS BILL, 2021

BEATING PLASTIC POLLUTION: ON PLASTIC WASTE MANAGEMENT AMENDMENT RULES

MISUSE OF PIL | ARVIND TUKARAM SHINDE V. STATE OF MAHARASHTRA & ORS., 2021 SC

HC SAYS IT'S TIME TO STOP DOMESTICATING ELEPHANTS

CONSTITUTIONAL LAW

LS CLEARS BILL RESTORING STATES RIGHTS TO SPECIFY OBC GROUPS

What happened? The 127th Constitutional Amendment Bill, 2021 was passed by the Lok Sabha with unanimous support from Parliament House.

What about it? The Bill amends the Constitution to allow states and union territories to prepare their own list of socially and educationally backward classes.

Why this amendment is necessary? The Supreme court of India in *Maratha reservation case (May 2021)* upheld that 102nd Constitutional Amendment Act.¹

- The **102nd Constitution Amendment Act of 2018** gave constitutional status to the National Commission for Backward Classes (NCBC), and empowered the President to notify the list SEBCs for any state or union territory. [Refer *Articles 338-B & 342-A*]²
- The **127th Constitutional Amendment of 2021 Bill**, however, amends this to provide that the President may notify the list of socially and educationally backward classes only of the central government. Thus the amendment Bill bypasses the SC ruling and **restores the powers of the state governments to maintain a state list of OBCs.**

Beneficiaries

- This Constitutional Amendment is considered as historic as total 671 castes would benefit from it.
 - States right to make its own list of OBCs would be restored.
 - Once it becomes an Act, it would be the 105th Constitutional Amendment.
- **The 127th Constitution Amendment Bill will amend clauses 1 and 2 of Article 342A and also introduce a new clause 3. The Bill will also amend Articles 366 (26c) and 338B (9).**
 - **The 127th Amendment Bill is designed to clarify that the states can maintain the "state list" of OBCs as was the system prior to the Supreme Court judgment.**
 - **Articles 366 (26c) defines socially and educationally backward classes.**

Passing of Amendment Bills-

- Article 368 of the Constitution provides that Amendment can be made by introduction of a Bill in either House of the Parliament by majority of the members of Parliament.

¹ Earlier in *Jaishree Laxmanrao Patil v. Chief Minister, (2021)*, also known as *Maratha quota case*, the apex court held by 3:2 majority that the 102nd Constitution Amendment has abrogated the power of states to identify 'Socially and Educationally Backward Classes' (SEBC).

² Articles 338B deals with the structure, duties and powers of the National Commission for Backward Classes. Article 342A says that the President, in consultation with the governor, would specify the socially and educationally backward classes.

- There are three kinds of majority:
 - i. Simple majority- Majority of total membership of that House of Parliament in which that Bill is to be passed.
 - ii. Special majority- Majority of total membership of a House and by majority of not less than two- thirds of the members of that House present and voting.
 - iii. Special majority and ratification by states- there must be special majority and also ratification by at least one- half of the States by resolutions to that effect.

CONCLUSION : The Opposition's support to pass the Bill is significant as a constitutional amendment requires a two-thirds majority of lawmakers who are present during the proceedings, with at least 50 percent in attendance.

PARTIES GET 48 HOURS TO PUBLISH CANDIDATES' CRIMINAL RECORDS

**[AUGUST 2021] Brajesh Singh vs Sunil Arora
CONTEMPT PETITION (CIVIL) NO. 656 OF 2020**

What happened? The Supreme Court had warned the Parliament regarding nation's loss of patience due to advent of criminals in the politics even after imposing fines on major political parties. The fine was imposed on Congress and BJP leaders for hiding the criminal past of the candidates from voters.

Plea before SC : A contempt plea was filed in the Supreme Court seeking action against political parties which had failed to declare and publish criminal records of their candidates.

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Directions by SC

- The apex court said that the legislature was "not likely to do anything" for preventing criminals from entering into politics.
- The court had issued directions that political parties shall publish the criminal history, if any of their election candidates on the homepage of their party's website. This will be published on the website under the caption 'candidates with criminal antecedents' within 48 hours of their selection. These directions were given by apex court in its judgment linked to Bihar Assembly election.
- The court said uploading details regarding antecedents of politicians is mandatory and it must be published in two newspapers also and the compliance report must be submitted to the Election Commission of India within 72 hours of the candidate's selection.
- The Election Commission shall also form a separate cell in order to monitor the political parties on their compliance with the court's judgment.
- The court also ordered the Election Commission of India to launch a dedicated mobile app for voters to know criminal history of their candidates.
- **Non-compliance-** The court said that any kind of violation or non-compliance of judgment directions would be viewed 'very seriously'.
- The court also said that its hands are tied from taking any further action and they cannot transgress into area reserved for legislature.

PREVENTIVE DETENTION ONLY TO FORESTALL PUBLIC DISORDER

What happened?

The Supreme Court held that Preventive detention is the dreadful power of the State for restraining an individual's liberty without trial and this power should be used only to prevent public disorder.

Background of the case

An appeal filed by the wife of man who was kept under preventive detention under the Telangana Prevention of Dangerous Activities Act, after he was granted bail in a cheating case.

Observations by SC

- i. Preventive detention can be used only to prevent public disorder.
- ii. A possible apprehension of breach of law and order cannot be ground to detain a person under Preventive Detention Law.
- iii. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects 'law and order' but before it can be said to affect 'public order', it must affect the community or the public at large.
- iv. The expressions 'law and order', 'public order' and 'security of state' are different from one another.
- v. The preventive detention must

Passing Preventive Detention Order

- i. A preventive detention order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order.
- ii. Preventive detention must fall within the four corners of Article 21 (due process of law) read with Article 22 of the Constitution of India.

Preventive Detention

Article 22 of the Constitution of India provides protection against arrest and detention of person in certain cases. It provides for preventive detention law.

Article 22(3) (b) provides for preventive detention and restriction on personal liberty for reasons of state security and public order.

Article 22(4) provides that person shall not be detained for period more than three months unless an Advisory Board reports any sufficient cause for extended detention before the expiration of three months period.

44th Amendment- It reduced the detention period from three to two months without the opinion of advisory board. But it has not come into effect.

Judicial Pronouncements:

- i. The apex court referred the judgment in *Madhu Limaye v. Sub- Divisional Magistrate* the Bench observed that preventive detention is a necessary evil only to prevent public disorder.
- ii. In *Mariappan v. District Collector and Ors.*, the court held that the aim of detention and its law is not to punish anyone but to stop certain crimes from being committed.
- iii. In *Union of India v. Paul Nanickan and Anr.*, the apex court said that the reason for preventive detention is based on suspicion or reasonable possibility and not a criminal conviction, which can be justified only by valid proof.

FAITH AND MARRIAGE: ON ANTI- CONVERSION LAWS**What happened?**

The Gujarat Government has strongly defended its new Anti- Conversion law before the High Court.

It pleaded that the legislation only deals with 'unlawful religious conversion' through marriage and it does not prohibit people from entering into inter-faith wedlocks.

Criminalisation of laws

- The anti-conversion laws which are also called as 'freedom of religion' in some states criminalise conversions which are obtained by fraud, force or allurement.
- The aggressive unconstitutional feature of recent anti-conversion laws that are made by different states is "Criminalisation of inter-faith marriages" by treating them as means to convert one of the parties from one religion to another.

Case before Gujarat HC

- The Bench of High Court is hearing a petition which challenges the provisions of the law that penalize the forcible or fraudulent religious conversion through marriage.
- This petition challenges the Gujarat Freedom of Religion (Amendment) Act, 2021.
- While providing protection to parties of inter-religious marriage against the needless harassment, the Gujarat High Court said that State amendments donot apply to marriages which does not involve fraud, force or allurement.

Right to choice

- Article 21 of the Constitution which provides for Right to life and liberty also provides for an individual's 'Right to choice'.
- An individual has a Right to choose partner of his choice.
- *Shafin Jahan v. Ashokan*- The principle that the right to marry a person of one's choice flows from the verdict of this case.

- The order of Gujarat High Court stalling criminal action against those entering into a valid inter-faith marriage constitutes a significant judicial pushback against disconcerting attempts by several states to foment communal divides through dubious legislation.

PLEA IN SUPREME COURT AGAINST TRIBUNAL REFORMS ACT

What happened?

- Jairam Mahesh, Rajya Sabha MP has approached the Supreme Court challenging the constitutionality of the Tribunals Reforms Act, 2021 which was passed a week before.
- The main reason for challenging it was that it has re-enacted the same provisions which were earlier struck down by the court in Madras Bar Association case.

Grounds for filing Petition

- That impugned legislation abrogates the principle of judicial independence and it amounts to 'unconstitutional legislative over-riding' of the judgment passed by the apex court.
- It mentions that proviso to Section 3(1) read with Sections 3(7), 5, 7(1)(f) the impugned Act are ultra vires of Articles 14, 21 and 50 of the Constitution of India.
- Proviso to Section 3(1) of the Act bars appointments of persons to tribunals who are less than 50 years of age and undermines the length or security of tenure. Thus. It violates both judicial independence and principle of separation of powers.

Remarks by Supreme Court

- The court remarked against the impugned law and has asked the Solicitor General of India as to why the legislation was introduced with provisions that were already struck down by the court.
- The Bench also said that Centre did not follow the directions repeatedly issued by the court for ensuring the proper functioning of the Tribunal.
- CJI expressed that they were not commenting on Parliament's proceedings as it has prerogative right to make laws. But at least the court should know why the government has introduced the already invalidated provisions.

CRIMINALISING WELFARE ISSUES | Kush Kalra vs Union Of India [July 2021]³

What happened? The Supreme Court has turned down the petition to restrain begging at traffic lights, markets and public places in the light of precautionary measures for the Covid-19 pandemic.

³ Writ Petition(s)(Civil) No(s).708/2021

- It observed that 'being forced to beg' is a socio-economic issue that could be resolved by the kinds of orders sought originally.

What should be criminalized?

- i. While deciding about 'criminalisation', an important point taken by legislature, the important point to be considered must be- whether the issue sought to be addressed might be better suited to a welfare response.
- ii. Example of welfare issues against which the coercive force of criminal law has inappropriately been deployed serve to illustrate the point.
- iii. In *Harsh Mander & Anr. v. Union of India* (1959) the Delhi High Court noted that the criminalization of beggary served only to make the beggars invisible without doing anything to address the structural deprivations that drove people to beg.
- iv. Socio-economic marginalization and poverty may frequently make people vulnerable to exploitation whether through less wages or unpaid labour, trafficking and sex work, begging.
- v. A criminal response to ones who take benefit of such vulnerability may be appropriate but it will amount to little more lip service to the predicament of the exploited without accompanying welfare measures.
- vi. It is important to ensure that pimps, brothel owners and traffickers are held criminally liable for sexually exploiting the person.
- vii. It is important to rehabilitate the persons who are rescued from such practices.
- viii. Beggars, sex workers, bonded and child labourers are largely marginalized people and who face discrimination on basis of gender, caste, class, age ect.

In *Suhail Rashid Bhat v. State of Jammu & Kashmir and others* (2019), the court said that "Begging is also in fact evidence of the failure of the Government as well as the society at large to protect its citizens from debilitating effects of extreme poverty and to ensure them basic food, clothing, shelter, health, education, essential concomitants of the right to life ensured under Article 21 of the Constitution of India."

Criminal law for whom?

It is difficult to say for whom the criminal law is. While assessing the function or necessity of criminalizing something that is essentially or even partially a welfare issue, its critical to consider who the law actually serves.

RIGHT TO EDUCATION ENTITLEMENTS TO BE PAID THROUGH CASH TRANSFERS

The Centre planned to pay the students their 'Right to Education' entitlements. It will be in the form of cash as part of the 'revamp and extension' of its flagship "*Samagra Shiksha*" Scheme which was approved by the Cabinet.

Right to Education

- By 86th Amendment Act, 'Right to Education' [RTE] was declared as Fundamental Right under Article 21A of the Constitution in 2009.

- RTE provides for free and compulsory education to children aged 6 to 14 years.
- The RTE Act mandates 25% reservation for disadvantaged sections of the society in Private schools.
- 'No detention policy' clause under the Act had been removed by under the Right of Children to Free and Compulsory Education (Amendment) Act, 2019.

CHILD HAS RIGHT TO USE MOTHER'S SURNAME

What happened? The Delhi High Court observed that every child has a right to use their mother's surname and father cannot force his decision on the matter. [*Vindhya Saxena v. East Delhi Municipal Corporation*]

- Justice Rekha Palli said: "The father does not own the daughter to dictate that she uses only his surname. If the minor daughter is happy with her surname, what was the problem?"
- The Judge added that every child has a right to use his/her mother's surname if he/she wish to do so.

CBI, POLICE IGNORING JUDGES COMPLAINTS: SC [INDEPENDENCE OF JUDICIARY]

What happened?

- The Supreme Court has suggested for forming a special force for protection of Judges especially the trial Judges who give decisions in criminal cases involving high-profile accused. [Re: Safeguarding courts and protecting Judges (Death of ADJ, Dhanbad) 2021]
- Apex court also said that CBI and IB are not assisting judiciary at all when it comes to their safety and security as CBI and police ignores complaints of Judges and did not respond to it.
- The murder at dawn is a chilling blow to **judicial independence** and an indication of the worsening law-and-order situation. Intimidation by powerful people using muscle power is a fact of life officers in the lower judiciary have to live with across the country, with little protection.⁴

Murder of Jharkhand ADJ

- A suo motu case was registered by the Supreme in regard to killing of Dhanbad ADJ- Uttam Anand.
- The Judge was knocked by an auto when was out of his house for morning jog.
- CJI, N.V. Ramana said that there are numerous cases involving high profile gangsters and accused and these accused threaten and harass the Judges mentally to get decision in their favour.
- He also said, that Judges are not only physically harassed but mentally too by forwarding abusive messages on their social media accounts and CBI has done nothing in relation to the complaints made to it by Judges.

⁴ <https://www.newindianexpress.com/opinions/editorials/2021/aug/02/judges-hit-and-run-murder-in-jharkhand-is-affront-to-judiciary-2338746.html>

- New trend of maligning the Judges has started and they are left with no freedom to work freely.
- The court called the death of ADJ a result of Jharkhand government's negligence to protect Judges in the state and also asked the government whether it has taken off all the responsibility in investigating the case as it transferred the case to CBI.

Protection is a necessity

- In this case, the Judge was not provided with any protection although the nearby area has coal mafias and it was utmost duty of the government to provide the society and Judges residences with proper security.
- Attorney General, Venugopal such frequent attacks on Judges, and incidents of threatening judges has highlighted the need for forming a special body to protect the judiciary and ascertain any danger to them.
- CJI said that special force like Railway Police Force is the necessity so that Judges can work without fear.
- The court has also asked the union and state governments to file a status report showing what nature of security is provided to subordinate and High Court Judges.

Directions to CBI : The apex court has directed CBI to represent before the court on certain date for hearing to show why it did nothing in the case.

MASS SURVEILLANCE | PEGASUS ISSUE

MASS TARGET : A Supreme Court Bench led by Chief Justice of India N.V. Ramana will on August 5 hear a petition filed by senior journalists N. Ram and Sashi Kumar for an independent probe headed by a former or sitting top court judge into the mass surveillance of over 142 potential "targets", including journalists, lawyers, ministers, Opposition politicians, constitutional functionaries and civil society activists, using military-grade Israeli spyware Pegasus.

PEGASUS SOFTWARE? The Pegasus software, manufactured by Israeli cyber-arms firm NSO Group Technologies Limited, is "extremely advanced and capable of infecting a mobile phone/device without any interaction with the owner. It is also known as zero-click attack.

"It can conduct extremely intrusive surveillance, including tracking and recording calls, reading text and WhatsApp messages, collecting passwords, reading emails, accessing photos and videos, activating camera and microphone and enabling them to record events, and harvesting information from apps. It can be installed as simply as by placing a call on the targeted device, even if the call is not picked up"

Mr. Sibal had pleaded urgency in hearing as the petition concerned issues affecting the fundamental rights, civil liberties of citizens and even national security. He said the issue was making waves not only in India but globally.

“Such mass surveillance using a military-grade spyware abridges several fundamental rights and appears to represent an attempt to infiltrate, attack and destabilise independent institutions that act as critical pillars of our democratic set-up,” the petition has said.

It has sought a full disclosure from the government on whether it had authorised the snooping, which seems to be an attempt to muzzle free speech and to chill dissent. The government, the petition said, had still not given a straight answer to whether the illegal hack was done with its blessings.

The journalists have contended that spying has caused serious dents on the rights to free speech and privacy. It has no legal basis. In fact, the legal regime for surveillance under Section 5(2) of the Telegraph Act seems to have been completely bypassed. Civilians have become targets.

FARMERS HAVE RIGHT TO PROTEST BUT STIR SHOULD NOT HINDER TRAFFIC: SC

Monicca Agarwal V. Union Of India & Anr| WP(C) 249 OF 2021

What happened?

- The Supreme Court said that farmers have ‘Right to Protest’ but the agitation shall not block the public roads and hinder traffic. It also said that the responsibility to clear the blocking of roads and end the farmer- government impasse over the Three Farmer Laws lies on the Centre and States.
- The court said that it is administrative failure as judicial review has already been propounded by them.

Petition filed

- A Noida resident has filed a petition before the apex court complaining that commuting to and fro between Delhi and Noida has become a nightmare as roads are being blocked by farmers protesting against farmer laws.
- She also added that due to blockage of roads it is taking about 2 hours to reach Delhi but normally its 20 minute distance.

Three Farm Laws

- The farmers are protesting against the ‘Three farm laws’ on the outskirts of Delhi since 2020.
- Bill on agriculture market, Farmer’s Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 creates an ecosystem where farmers and traders will enjoy the freedom to sell and purchase farm produce outside registered ‘mandis’ under states APMCs. It promotes barrier-free inter-state and intra-state trade of farmers’ produce. It

aims to reduce marketing or transportation costs and help farmers in getting better prices.⁵

- Bill on contract farming- The Farmer (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020 provide that farmers can enter into contract with agribusiness firms, processors, wholesalers, exporters or large retailers for sale of future farming produce at a pre-agreed price. It provides that risk of market unpredictability will be transferred from farmers to sponsors and that marketing cost will reduce and farmer's income would boost. According to this bill, farmers can engage in direct marketing by eliminating intermediaries for full price realization.⁶
- The third bill relates to commodities- The Essential Commodities (Amendment) Bill, 2020. The provisions of this Act mentions for removing commodities like cereals, pulses, oilseeds, onion and potatoes from list of essential commodities, it means stockholding limits on these would not apply except in 'extraordinary circumstances' like war. It aims to attract private sector in agriculture sector and to bring investment for farm infrastructure such as cold storages and modernizing food supply chain and create competitive market environment and cut wastage of farm produce.⁷

INTERNATIONAL LAW

INDIA ALL SET FOR UNSC PRESIDENCY TERM

Context : India is all set to assume the Presidency of UN Security Council and ready to host signature events in UNSC related to three major fields – maritime security, peacekeeping and counter- terrorism.

About UNSC

- a) Security Council is one amongst the six organs of United Nations Organization.
- b) It is responsible for maintaining international peace and security.
- c) Security Council comprises of 15 members out of which- 5 are Permanent Members and 10 Non Permanent Members.
- d) Security Council has the power to make binding decisions which are agreed to by its member states.
- e) Such decisions passed by Security Council are known as 'UN Security Council Resolutions'.

UNSC presidency

⁵ https://m.timesofindia.com/india/what-is-farm-bill-2020-pros-cons-of-three-farm-bills-centre-introduced/amp_articleshow/78180231.cms

⁶ https://m.timesofindia.com/india/what-is-farm-bill-2020-pros-cons-of-three-farm-bills-centre-introduced/amp_articleshow/78180231.cms

⁷ https://m.timesofindia.com/india/what-is-farm-bill-2020-pros-cons-of-three-farm-bills-centre-introduced/amp_articleshow/78180231.cms

- The two year tenure of India as non-permanent member of the UNSC already commenced on 1st Jan. 2021.
- India will chair the Presidency of UNSC during it's two tenure for the very first time in August 2021.
- After this, India will once again assume Presidency in last month of its tenure, i.e. in December 2022.
- PM Narendra Modi will be the first Indian Prime Minister to preside a meeting in UNSC.
- Besides the three signature events, several important meetings will be held on Syria, Iraq, Somalia, Yemen and Middle East issue.

2021 Resolutions by Security Council

- Reports of the Secretary General on the Sudan and South Sudan.
- The situation in Somalia, Middle East
- Maintenance of international peace and security
- The situation in Central African Republic
- Non- proliferation/Democratic People's Republic of Korea
- Non- proliferation of weapons of mass destruction
- Protection of civilians in armed conflict
- UN peace keeping operations

UNSC UNANIMOUSLY ADOPTS SIGNIFICANT PRESIDENTIAL STATEMENT, RESOLUTION ON PEACE KEEPING AS INDIA PRESIDES OVER COUNCIL

Context:

For the very time, India is currently presiding the UN Security Council and a resolution on ensuring the accountability for crimes committed against the UN peacekeepers has been adopted unanimously.

The UNSC has called the member states hosting peacekeeping operations so as to bring to justice the perpetrator blameworthy for killing and committing acts of violence against the Blue Helmets.

The first signature event under India's UNSC presidency held on 9th August 2021 chaired by PM Narendra Modi on 'Enhancing Maritime Security- A case for International Cooperation.

Open debate

- External Affairs Minister to India held an open debate at UNSC with the theme- 'Protecting the Protectors: technology and Peacekeeping'.
- The first resolution by India in UNSC was co-sponsored by all the members of Security Council along with 80 UN member states. It reflects the support of international community.

- The Presidential Statement on peacekeeping encouraged the use of modern technology for improvement in performance, safety and security of peacekeepers who operate in dangerous environment.
- This is the first such resolution in UNSC that calls for prevention, investigation and prosecution to deliver justice.
- The resolution urges all the parties to fully respect their obligations under International law.
- It encourages the member states including troop and police contributing countries whose personnel were victims of killing and other acts of violence against the UN personnel to actively participate and share all the information with SC to assist member states to bring the perpetrators to justice.

NEARLY FOUR LAKH PEOPLE NEWLY DISPLACED IN AFGHANISTHAN BY CONFLICT SINCE START OF YEAR

What happened?

Since the commencement of 2021, around 4 lakh people have been displaced in Afghanistan. The current situation in Afghanistan is devastating and deteriorated the security.

US forces in Afghanistan

- United States has started taking back its forces from Afghanistan and will have complete drawdown by 31st August. By this, it will cease the two decades of military presence in Afghanistan.
- Since US started backing off from Afghanistan, it is witnessing numerous terror attacks by Taliban insurgents.

Displacement of people

- The spokesperson to Secretary General Antonio Guterres said that since the commencement of 2021, around 4 lakh people have been newly displaced due to conflict in the nation.
- As per the UN Humanitarian colleagues data, about 5800 internally displaced persons reached Kabul for safety against the threats. They received assistance such as food, household items, water and sanitation support.
- Around 10 teams have been deployed to evaluate the circumstances and ensure safety of people staying out in parks and open places in Kabul.
- Taliban has managed to take more than half of Afghanistan's 400 districts under their control.
- The Peace deal between US and Taliban has been violated by Talibans' attacks on provincial capital- Kabul.

What is Internal displacement? Internal displacement is a consequence of violations of International Humanitarian law during armed conflict. International Committee of the Red Cross is to protect and assist persons who got affected by armed conflict.

According to Guiding Principles on Internal Displacement, 'internally displaced' persons are "those persons or group of persons who are forced or obliged to flee or to leave their homes or places of habitual residence in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters and who have not crossed an internationally recognized border."

Refugees in the world

- a) UNHCR data shows that as of 2020, about 2.8 million Afghans took refuge in foreign nations.
- b) Who is a refugee?
A person who flees his or her nation because of persecution, war or violence is known as refugee.
- c) As per UNHCR, the leading reasons of refugees fleeing their nation are- war and ethnic, tribal and religious violence.

FATHER MOVES SC TO EXTRADITE WOMAN WHO JOINED ISIS

What happened?

The father of woman from Kerala has filed a petition before the Supreme Court demanding extradition of his daughter and grand-daughter who joined ISIS and is detained in Afghan prison.

Grounds of Plea

- The father is afraid that his daughter and grand-daughter may be executed amidst the fight between Taliban and Afghan government.
- There may be war between Islamic government and Taliban after withdrawal of American forces and detainees lives are at risk.
- It also stated that not bringing her back by the central government would amount to violation of obligations under International Humanitarian Law including Universal Declaration of Human Rights, 1948 (UDHR) and International Covenant on Civil and Political Rights, 1966. It also violates her fundamental rights under Articles 14, 19 and 21 of the Indian Constitution.
- Petitioner requested the apex court to issue directions to Central government to take steps to provide "diplomatic protection/consular assistance to the detainees through its consular/diplomatic office in Afghanistan".
- He said that woman was charged by the National Investigation Agency for several offences under UAPA and should face trial in India.

Extradition treaty with Afghanistan

- India entered into Extradition treaty with Afghanistan in 2016 and “Instruments of ratification of the Treaty” were exchanged at Kabul in 2019.
- By virtue of this treaty each contacting state agrees to extradite any person who is convicted or accused of an offence which is committed within the territory of one state but is found in the territory of another state.

In the present case, as Indian government has not taken any steps for requesting extradition of both detainees, due to which both are stuck in the foreign nation.

TALIBAN SEIZE ANOTHER CITY IN AFGHANISTAN

What happened?

Taliban has captured two major cities of Afghanistan, after ending the American military mission in the nation. These are the second and third largest cities after Kabul.

Evacuation by US, UK

- Understanding the deteriorating situation and threat to their security, US has sent thousands of troops to evacuate their personnel from US Embassy in Kabul.
- At the same time, UK also deployed its troops to assist British nationals in leaving the nation.
- US military suggested that Kabul may come under insurgent pressure within 30 days and if such situation continues to prevail, Taliban will succeed in forming its own government.
- The Czech Republic also decided to withdraw their Afghan staff from their embassy and also their diplomats to Kabul International Airport.

Fear in the minds : Thousands of Afghans left their homes in the fear of Talibans. They fear that Talibans will brutally threaten them and form repressive government where women will get no rights and again deadly punishments like public amputations, stoning, executions will be done for any wrongs.

Central government's control : After the collapse of Jalalabad, Afghanistan's central government has control over Kabul and 6 other provincial capitals out of the nation's 34 Provinces. Taliban is taking over major cities of the country and had defeated and flew the Afghan security forces from different corners of the nation.

Plight of the people

Thousands of civilians have moved to parks and left their houses and have gathered in open spaces to protect their lives.

ATMs are not distributing cash to people as long queues are evidenced in front of the private banks and people are withdrawing their life savings.

Peace talks

The US continued peace talks between the government and the Taliban. The international community has warned that Taliban government brought by force would be shunned but the insurgents appear to have little interest in making concessions.

LAW OF CRIMES

NO FURTHER SENTENCE AFTER LIFE TERM

What happened?

In **Imran Jalal @ Bilal Ahmed v. State of Karnataka, (2021)** the Supreme Court observed that court cannot stipulate that other sentences would begin after expiration of life sentence awarded to convict.

Facts of the case

In this case, the accused was awarded life imprisonment on three counts and sentence of 10 years each on 5 counts. The court held except for the offence punishable under Section 5(b) of the Explosive Substances Act, 1908 i.e. rigorous imprisonment of 10 years the other sentences of imprisonment shall run concurrently. This sentence of 10 years shall commence at the expiration of other sentences. This decision was affirmed by the High Court in appeal.

Appeal before Supreme Court

In appeal the issue raised was that the court's order stating that sentence of imprisonment of 10 years rigorous imprisonment will commence after the other sentences would expire is incorrect. The decision given in **Muthuramalingam v. State** was referred in appeal wherein the court had observed, "The court can legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31 CrPC. The converse however may not be true for if the court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence."

Section 31 of CrPC- It provides that the court while passing several sentences to an accused in one trial must determine whether the sentences shall run concurrently or consecutively

Supreme Court's decision- The apex court held that part of trial court's order for consecutive running of sentence is against the law laid down in Muthuramalingam's case. Therefore, it ordered that such part shall stand deleted.

NOD FOR CONTINUATION OF FAST TRACK SPECIAL COURTS

What happened? Union Cabinet gave approval to continuance of 1023 Fast Track Special Courts which also includes 389 exclusive POCSO Courts under a centrally sponsored scheme.

Why this scheme? This scheme for Fast Track Courts was launched in the year 2019 for expeditious disposal of trials.

Need of Fast Track Courts? As per govt. sources, around 1.67 lakh cases of rape and under POCSO were reported in 2019.

- Now the cases are increasing more and more and this number had jumped to 2.34 Lakh cases in 2021.
- One main cause for increasing cases is huge pendency of cases due to COVID-19 Pandemic.

Stringent sexual offences laws : Criminal Law Amendment Act, 2018 was enacted to make more strict provisions against cases involving rape and other sexual offences and for expeditious trial and disposal of case. It amended Section 376IPC, added Sections 376AB, 376DA, 376DB and made certain amendments into POCSO.

Law Minister on this scheme : The Law Minister Kiren Rijiju welcomed the decision and tweeted:

- “it is a major step towards de-clogging the justice system.
- This will provide quick justice to victims of sexual crimes.”

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CONTRACT MARRIAGES ARE CASES OF CHEATING

What happened?

- Young men are becoming prey to matrimonial ads showing IELTS bands scored by prospective brides.
- The new buzz word in Punjabi marriages is IELTS bridegrooms.
- Contract marriage frauds are increasing day by day. Such contract marriages are executed to secure Permanent Residence in foreign nations especially Canadian PR.

Incidents of contract marriages

- In 2012, Jobenjeet Singh had filed a case under Section 420 IPC against his wife with the NRI wing of Punjab Police. He alleged that his wife used his money to go abroad and after reaching there she ended all kinds of communication. After some years, family of accused filed a divorce case on behalf of their daughter in 2020.
- Another case is of Harpreet Singh from Mandi Gobindgarh, Punjab whose wife double crossed him after leaving for Canada two and half years ago. She told him that she wanted to continue his life with other man and asked him not to communicate with her. Somehow, Harpreet got spouse visa and reached Canada where his wife filed a divorce

case against him. He has filed a case under Section 420 IPC against the girl and his family.

- Many such cases have highlighted few days back where in one case, the husband committed suicide.

ADGP Punjab on this matter

AS Rai, ADGP (NRI Affairs) Punjab told-

- That it's basically an arrangement to facilitate the immigration of boys who did not score well in IELTS.
- In some nations, one can take spouse along but in others, it's not allowed. In Canada, spouse visa is given after certain conditions are fulfilled. That is one reason for more cases of cheating surrounding Canada.
- He observed that such cases are not matrimonial disputes but cases of cheating- as one party enters into contract with other who has promised the delivery of some services, where other has paid him certain amount of money and one has rescinded that contract.
- He said that in such cases they check the financial transactions such as university fees paid, air tickets purchase etc. to establish case of cheating.

Cheating under IPC

Section 415 of IPC defines cheating and Section 420 of IPC provides punishment for cheating and dishonestly inducing delivery of property.

Essentials for offence of cheating:

- i. There must be deception of some person by the accused.
- i. Accused dishonestly or fraudulently induces person-
 - a) To deliver property to any person, or
 - b) To consent that any person shall retain any property

Or

- i. There must be deception of some person by the accused.
- i. Accused intentionally induces the person so deceived-
 - a) to do or omit to do something
 - b) which that person would not do or omit unless deceived
 - c) that act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

Explanation to Section 415 of IPC provides that dishonestly concealing the facts amounts to 'deception'.

CONTEMPORARY LEGAL DEVELOPMENTS

APEX COURT QUESTIONS STATES ON CASES UNDER SECTION 66A

What happened?

- The Supreme Court of India has issued notices to all the states to respond to a petition filed by PUCL (NGO) stating that although Section 66A of IT was declared unconstitutional in 2015 yet the citizens are booked and prosecuted under this Section.
- The NGO urged the apex court to direct the government through the National Crime Records Bureau or any other agency to collect all the data or information regarding FIRs or investigations under Section 66A and pending cases in the District and High Courts.

Striking down Section 66A of IT

In *Shreya Singhal v. Union of India*, (2015) the Supreme Court struck down Section 66A of IT Act, 2000 on the following grounds:

- That the provision is violative of Article 19(1)(a) and is not saved under Article 19(2) of the Indian Constitution.
- Section 66A of IT Act is arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and reasonable restrictions that may be imposed on such right.

Section 66A of IT Act-

It prescribed upto three years imprisonment if any social media message causes annoyance or was found 'grossly offensive'.

The Supreme Court found it 'distressing', 'shocking' and 'terrible' that people were still booked and tried under Section 66A of IT Act even 6 years after the Supreme Court had struck down the provision as unconstitutional. The Supreme Court Bench said that-

- the state governments which control the police force are answerable for this practice.
- the judiciary could be reined in from wrongly charging under Section 66A of IT but the co-operation of the States was necessary to put the brakes on the police from registering FIRs under Section 66A of IT Act.

THE COMMISSION FOR AIR QUALITY MANAGEMENT IN THE NATIONAL CAPITAL REGION AND ADJOINING AREAS BILL, 2021

What is the relevance? This bill is cleared by Lok Sabha in August 2021.

What about this bill? It seeks to curb air pollution in Delhi NCR and areas adjoining the NCR in the States of Haryana, Punjab, Rajasthan and Uttar Pradesh.

Functions of the Commission	Powers of the Commission
<ul style="list-style-type: none"> • To co-ordinate the actions taken under the Ordinance by state governments (Delhi, Punjab, Haryana, Rajasthan and UP) • To plan and execute such plans to control 	<ul style="list-style-type: none"> • To restrict activities influencing air quality • Investigating and conducting research relate to environmental

<p>the air pollution in NCR.</p> <ul style="list-style-type: none"> • To provide a framework for identifying air pollutants • To conduct research and development through networking with technical institutions • Training and creating a special workforce to deal with issues related to air pollution. 	<p>pollution impacting air quality</p> <ul style="list-style-type: none"> • Preparing codes and guidelines to prevent and control air pollution • Issuing directions on matters including inspections, or regulations which will be binding on the concerned person or authority.
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Composition of the Commission



BEATING PLASTIC POLLUTION: ON PLASTIC WASTE MANAGEMENT AMENDMENT RULES

- The Plastic Waste Management Amendment Rules notified by the Centre acknowledge the gravity of pollution that was caused by plastic articles used every day particularly the plastic that has no utility except its usage of few minutes or hours.
- Under these new Rules, the manufacture, sale and use of some single use goods made with plastic, polystyrene and expanded polystyrene are prohibited. Such single use goods include- earbuds, plates, cups, glasses, cutlery, wrapping and packing films.

Plastic Waste Management Amendment Rules, 2021

- a) These Amendment Rules have been notified by the Environment Ministry.
- b) It prohibits specific single-use plastic items that have 'low utility and high littering potential' by 2022.
- c) The thickness of plastic bags permitted at present is 50 microns but it would be thickened to 75 microns from 30th September, 2021 onwards, from 31st December to 120 microns.
- d) The reason for increasing the thickness is that the plastic bags which have higher thickness are easily handled as waste and possess higher recyclability.
- e) The concept of EPR (Extended Producer Responsibility) mentioned under 2016 Rules has to be promoted.
- f) The ban on plastic would be monitored by the Central Pollution Control Board (CPCB) and State Pollution Control Board. CPCB and SPCB will also identify the violations and impose penalties that are already mentioned under the Environment Protection Act, 1986.
- g) CPCB reported that 22 States announced ban on single use plastic in the past but it had impact on the crisis of water choking wetlands and waterways and being transported to the oceans to turn into micro plastic.

Why plastic is banned?

- a) Plastic is so cheap and convenient and it takes hundreds of years to disintegrate.
- b) 46% million tones of plastic waste is generated every year and 43% out of it is single use plastic.
- c) About 34 lakh tonnes of plastic was generated in 2019-20 and only 60% of it was recycled.
- d) Majority of G& nations support the cleaning up of oceans through a charter in the interests of human well being and environmental integrity.

India's initiatives

- India won approval for its 'Beat Plastic Pollution' drive which was declared on Environment Day under which it pledged to 'eliminate single use plastic by 2022'.
- At 4th UN Environment Assembly in 2019, India piloted a resolution on addressing pollution caused by single use plastic products.

MISUSE OF PIL | Arvind Tukaram Shinde v. State of Maharashtra & Ors., 2021 SC

What happened? The Supreme Court held that it was 'rather harsh' on part of the Bombay High Court to order a PIL litigant to deposit Rs. 3.9 crore to prove his bona fide. [*Arvind Tukaram Shinde v. State of Maharashtra & Ors., 2021 SC*]

PIL before Bombay High Court

- The petitioner who is a corporator with the Pune Municipal Corporation filed a PIL before the Bombay High Court against sewage treatment plant project of Rs. 390 crore.
- The Bombay High Court ordered him to deposit 1% of the total cost of that project i.e. Rs. 3.9 crore.

Discretionary order

- The Bombay High Court had passed such order in exercise of powers under Rule 7A of the Bombay High Court Rules 2010.
- Rule 7A provides that the court has discretion to direct the petitioner to deposit a sum, by way of security deposit in the court.
- But it shall be subject to final or interim order of the court.
- If the court finds the petition as vexatious, motivated or not pro bono public, then the amount so deposited shall be forfeited.

Appeal before the Supreme Court

- The petitioner moved the apex court that order of High Court would place an unbearable burden on the petitioner.
- The Supreme Court observed the following:
 - That purpose of incorporation of Rule 7A is to ensure that public projects are not dislocated by institution of motivated PILs.
 - But at the same time, a balance must be maintained to ensure that access to justice is not denied.
 - Imposition of 1% project cost is rather harsh and it set aside the Bombay High Court's order and directed the petitioner to deposit Rs. 10 Lakh as security before proceeding in the matter.

HC SAYS IT'S TIME TO STOP DOMESTICATING ELEPHANTS

What happened? Madras High Court has barred domesticating the elephants. It has issued several directions to the Principal Chief Conservator of Forests, Chennai and the Hindu Religious and Charitable Endowments Department to ensure the welfare of elephants kept in captivity in temples and elephant parks.

Plea filed A plea was filed before the High Court by activist Rangarajan Narasimhan that elephants kept in captivity in temples in the State of Chennai are treated inhumanly.

Concerns raised in the plea

- He pointed out several anomalies that the Forest Department and temples own sufficient land for large pockets of natural habitat for elephants to be developed, so that they can house captive elephants at such places and take to temples only for performance of rituals.
- Court may not have sufficient data that elephants are treated cruelly except that they are not given exposure to natural habitat.

- Individual Elephants are not being assigned mahouts at times and according to petitioner a bonding between the two is lifelong and when Mahout changes or there is none, he can act adversely.

Court's order- The Court stated that its high time that elephants should not be domesticated and taken into custody and issued the following directions:

- Forest Department officials must obtain expert advice as to what the daily routines of captive elephants should be followed.
- Forest Department officials shall coordinate with the Hindu Religious and Charitable Endowments Department or those responsible for running the temples where these elephants may be.
- They must ensure more ethical treatment of large animals even if its accepted hat elephants that have for long been into captivity cannot be released into the wild.
- The court stops any further domestication of elephants or taking them into custody except in case of injury or like disability and that can be done only by forest officials in special enclosures maintained within forest areas.

The Court indicated that its thinking to conduct an “alfresco hearing” in the presence of captive elephants kept at temples in order to discern how they are being treated by the concerned authorities.

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