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Bills & Acts

(2016-Main Exam)

SHANKAR IAS ACADEMY

Plot No. 1742, 1st Floor, Syndicate Bank Building, 18th Main Road, Anna Nagar, Chennai - 600 040.

Phone : 044-26216435, 64597222, 4353 3445 Mobile : 94441 66435

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ACT's
National Waterways Act, 2016.

Provisions:

- The Bill identifies 101 waterways as national waterways, in addition to the five existing national waterways.
- The Bill also specifies the extent of development to be undertaken on each waterway.
- The Bill repeals the five Acts that had declared the existing national waterways. These five national waterways will be covered under the proposed Bill.

Positives of the Bill:

- Expands the number of National Waterways to 101 from current level of 5, thereby creating provision for expansion of inland waterway network.
- Inland waterways is recognised as a fuel efficient, cost effective and environment friendly mode of transport

Issues and Analysis:

- **Technical feasibility:** Many of the proposed national waterways do not have sufficient water levels throughout the year as they are rain-fed rivers. This should be addressed during the time of techno-economic feasibility study.
- **Financial sanctions:** Currently, developmental works on some existing national waterways are not satisfactory due to lack of timely financial sanctions at the initial stage. Sufficient financial allocations should be made at appropriate times for effective implementation of projects proposed in the Bill.
- **Involvement of states:** While the subject of national waterways is on the Union List of the Constitution, water (includes irrigation and canals) is on the State List. The government must make suitable provisions in the Bill to ensure that states can continue to regulate on water.
- **New authorities and policies:** The Bill states that the101 waterways will be dealt with on a case-to-case basis under various environmental laws such as the Environment Protection Act, 1986, the Wildlife Protection Act, 1972, the Indian Forest Act, 2006 and the Coastal Regulation Zone Notification. Getting the required clearances for waterways under these many laws will not be easy. Special cell should be set up, with the consent of the heads of all the concerned Ministries.
- **Inland Waterways Authority of India (IWAI):** The current organizational set up and offices of the IWAI are not sufficient enough to undertake the tasks related to 101 proposed waterways. The IWAI should be strengthened with extra manpower and expertise in the field along with more

regional offices for better monitoring of its works in different states.

2. Ordinance to amend Enemy Property Act

Why in news?

President Pranab Mukherjee on Sunday night re-promulgated an Ordinance to amend the Enemy Property Act (Eviction of Unauthorised Occupants) of 1971 pending ratification by the RajyaSabha.

The original Ordinance was promulgated on January 7 this year. It was passed by the LokSabha in January and was subsequently referred to a Select Committee of the RajyaSabha.

The third Ordinance incorporating the amendments suggested by the Select Committee was promulgated by Mr. Mukherjee on May 31. Since its validity was to expire on August 28, the President on the recommendation promulgated the fourth Ordinance on the subject.

Ordinance:

- Article 123 of the Constitution enables the President of India to promulgate an ordinance if neither house of Parliament is in session nor "circumstances exist, which render it necessary for him to take immediate action".
- Every ordinance has to be laid before Parliament, and ceases to exist six weeks from the end of the next sitting of Parliament. Article 213 gives the same power to the Governor of a State.
- Ordinance-making power is not a new feature added to the Indian Constitution. Articles 42 and 43 of the Government of India Act, 1935, gave the same power to the Governor General.

Misuse of ordinance

- A minority government which doesn't have the necessary numbers to make laws often uses ordinance to bypass the regular law making process.
- The misuse of ordinances is one of India's most enduring Nehru-Gandhi legacies. Since 1950, 651 ordinances have been promulgated till 2010.
- The ordinance making power of the executive need to be suitably restrained to create a balance of power between the executive and the legislature in India and to plug in the misuse of it.

Enemy Property Act

The Central Government through the Custodian of Enemy Property for India is in possession of enemy properties spread across many states in the country.

The amendments through the Ordinance include that once an enemy property is vested in the Custodian, it shall continue to be vested in him as enemy property irrespective of whether the enemy,

- Enemy subject or enemy firm has ceased to be an enemy due to reasons such as death.
- That law of succession does not apply to enemy property.
- That there cannot be transfer of any property vested in the Custodian by an enemy or enemy subject or enemy firm.
- That the Custodian shall preserve the enemy property till it is disposed of in accordance with the provisions of the Act.

Features

- The Act allows transfer of enemy property from the enemy to other persons. The Bill declares all such transfers as void.
- This may be arbitrary and in violation of Article 14 of the Constitution.
- The Bill prohibits civil courts from entertaining any disputes with regard to enemy property.
- It does not provide any alternative judicial remedy (eg. Tribunals).
- Therefore, it limits judicial recourse or access to courts available to aggrieved persons.

Background

- In the wake of the Indo-Pak war of 1965 and 1971, there was migration of people from India to Pakistan.
- Under the Defence of India Rules framed under the Defence of India Act, the Government of India took over the properties and companies of such persons who attained Pakistani nationality.
- These enemy properties were vested by the Central Government in the Custodian of Enemy Property for India.
- After the 1965 war, India and Pakistan signed the Tashkent Declaration on 1966.
- The Declaration inter alia included a clause, which said that the two countries would discuss the return of the property and assets taken over by either side in connection with the conflict.
- However, the Government of Pakistan disposed of all such properties in their country in the year 1971 itself.

3. Public Safety Act

What is Public Safety Act, 1978?

- The act was brought into effect in 1978, to adopt a tough measure against timber smuggling in the state.
- It was later the act was used to control militancy-related incidents.
- Under this act, the government can declare any area as ‘protected’ and exercise authority to regulate entry of any citizen in the protected area.

- Attempts to forcefully enter the designated areas invite prosecution.

Amendments made to Public Safety Act

- It was in 2012 when the state legislature amended PSA by relaxing some of its strict provisions.
- The pre-trial detention period was reduced.
- In the case of first-time offenders or individuals who act against the security of the state for the very first time, the detention period for such individuals was reduced from two years to six months.
- The option of extending the term of detention to two years was kept open, if there is no improvement in the conduct of the detainee.
- It was only after the amendment that another crucial provision was put in place. It introduced the rule that minors (below the age of 18) cannot be detained under the PSA.
- It was also made mandatory for the detaining authority to furnish reason for any detention.
- A person detained under the PSA is held without trial.

Who are the detainees?

- According to J&K government records, those booked under PSA from July 8 to October 16 include: teachers, students, political activists, government employees and even a Special Police Officer (SPO).
- In 2016, record 434 people have been detained under the PSA since the July 8 outbreak of unrest in the Valley crossing hundred days.

What grounds are the detainees arrested?

- The grounds for arrest range from being “an eloquent speaker”, to “provoking youth”, “creating law and order problems”, “inciting protests”, and “acting in a manner prejudicial to the security of the state as well as the maintenance of public order”.

What are the similar act where police force have immunity?

- The Armed Forces Special Powers Act and the Public Sservice Act has similar provisions that provide exemption from criminal, civil or any other legal proceedings “for anything done or intended to be done in good faith in pursuance of the provisions of this Act.”

Which force can use PSA?

- The J&K police have been known to use the PSA to keep in jail those against whom it has no evidence to put on trial.
- J&K Police DGP (coordination and law & order) S P Vaid said the arrests under the Act were necessitated by the situation in the state. They (accused) indulged in arson, burnt vehicles and damaged public property. They have been dealt with as per the law.

- It has also used the Act repeatedly against the same person ensuring that he is continuously behind bars.

Criticism of Public Safety Act

- Human rights groups are almost unanimous in their stand – PSA results in wrongful detentions.
- Amnesty International has been 7nderutilize churning out reports on number of people detained over the years.
- Most advocacy 7nderutilized have opined that the state has been using the PSA to imprison suspects without adequate evidence.
- Many innocent people had become a prey to political vendetta because this act gives sweeping powers to the ruling party.
- PSA has been 7nderutili for denying citizens the right to fair trial and justice.
- Despite the amendment, the government still retains enough power to curtail freedom of people under the garb of ensuring state security and public order.

Conclusion

- Unless the government makes serious attempts to find out why Kashmiris are angry and alienated enough to become stone-pelters, and addresses those issues, the jails of Jammu & Kashmir will ever remain filled with PSA prisoners — with each new arrest diminishing a little more India's commitment to the rule of law.

4. Real Estate act

Why in news?

- The Centre is soon expected to notify the Real Estate Act passed by both the houses of the Parliament in March.

Summary of the bill

- The Bill regulates transactions between buyers and promoters of residential real estate projects.
- Regulator – It establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERAs).
- Mandatory Registration – All residential real estate projects, with some exceptions, need to be registered with RERAs. Promoters cannot book or offer these projects for sale without registering them. Real estate agents dealing in these projects also need to register.
- 70% of the amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project. The state government can alter this amount to less than 70%.

- Disclosure – On registration, the promoter must upload details of the project on the website of the RERA. These include the site and layout plan, and schedule for completion of the real estate project. This is to protect buyers from being cheated with fancy designs on paper and model apartments.
- Deadline – If a developer fails to hand over the property within the deadline, he would be liable to pay the buyer a certain amount as interest. This is to compensate the interest money the buyer will be paying against his housing loan.
- The Act also provides for imprisonment of up to three years for builders and one year for real estate agents and buyers for violation of any provisions, a stringent penalty according to experts.
- Appellate body – The Bill establishes state level tribunals called Real Estate Appellate Tribunals. Decisions of RERAs can be appealed in these tribunals.

Issues related to the bill

- Parliament's jurisdiction to make laws related to real estate can be questioned, as "land" is in the State List of the Constitution. However, it is to be noted that the primary aim of this Bill is to regulate contracts and transfer of property, both of which are in the Concurrent List.
- In certain cases, the cost of construction could be less than 70% and the cost of land more than 30% of the total amount collected. This implies that part of the funds collected could remain underutilized, necessitating some financing from other sources, raising the project cost.
- Commercial real estate and smaller projects are not covered under the act. Lack of clear land titles and prevalence of black money are some of main reasons for the lengthy process of project approval. Some of these fall under the State List.

5. Social Boycott Act

What is social boycott?

- Social boycott is a weapon used in rural and some urban communities to reinforce hierarchies and power structures.
- The more apt term for it may be "ostracism," where an individual is banished from a society (if not physically, then socially) for a perceived breach of that society's rules.
- In India, it is deployed against the deprived sections of society.
- It is aimed at making the lives of the boycotted as difficult as possible, cutting them from all social interactions that make life meaningful.
- To address this, the Maharashtra government passed the Social boycott act.

What are the features of Social boycott act?

- It seeks not only to criminalise a panchayat or any person who imposes or enforces a social boycott, but tries to take measures to prevent such social boycotts and give relief to victims.
- It also places an obligation on the district administration to take proactive steps to prevent any body from issuing calls for social boycotts.
- It creates the post of a "social boycott prohibition officer," to help the district administration and other officers in discharge of their duties.

What was Excommunication Act?

- This is not the first attempt by Maharashtra to tackle the problem of social boycotts.
- Excommunication is an institutional act of religious censure used to deprive, suspend, or limit membership of a person in a religious community.
- The Excommunication Act, 1949, declared that excommunications would have no binding effect and would not be enforceable, at the same time imposing criminal penalties on persons who engaged in or enforced an excommunication.

What is Article 26 of the Indian Constitution?

Article 26 is a Fundamental Right that provides Freedom of Religion. It states that – Freedom to manage religious affairs subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- To establish and maintain institutions for religious and charitable purposes;
- To manage its own affairs in matters of religion;
- To own and acquire movable and immovable property; and
- To administer such property in accordance with law.

Why was it quashed?

- The excommunication act was challenged in the Bombay High Court as being unconstitutional for violating the rights under Article 26 of the Constitution.
- **Bombay High Court turned down this challenge** on the grounds that the scope of the right of a religious denomination to manage its own affairs under Article 26 **could not possibly extend to interfering with the legal rights and privileges enjoyed under law**.
- But in a subsequent challenge Supreme Court struck down the excommunication act as being contrary to Article 26.
- It held that the power of excommunication, being an exercise of the religious power of a denomination or community, was protected under Article 26.

- The minority judgment written by the then Chief Justice, B P Sinha, disagrees with the majority. His judgment tentatively links the act of excommunication with the practice of untouchability, abolished under Article 17.
- The minority view expressed by Sinha is clearly the better reasoned one and takes into account the true extent of the protection of the freedom of religion guaranteed under the Constitution.

What will happen to the current law?

- There is one key distinction which has to be kept in mind while assessing the constitutional validity of the social boycott act.
- Excommunication necessarily means that a person's access to religious places of worship and fellow worshippers is cut off, but a social boycott of course may involve religious places of worship as wellneed but not necessarily do so.
- The fundamental differenceis in the nature of authority being claimed; excommunication is carried out by someone who has religious authority to do so. Social boycotts do not necessarily involve anyone with "religious authority."
- This distinction may seem narrow, but it is significant.
- The basis for the Court to strike down the excommunication act rests on the claim that it violated the rights of religious denominations to manage their own religious affairs. Social boycotts are imposed and enforced by caste panchayats, and such institutions are not, in general, religious institutions. If it is challenged in court, the social boycott act is unlikely to meet the same fate as its predecessor law.
- However, the law's effectiveness hinges on the ability of the police to necessarily take the side of the individual, the weaker and oppressed sections of the society, over their oppressors.

6. THE CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2016

Key Provisions:

- Complete prohibition of employment of children below 14 years in all occupations or processes except in entertainment & sporting activities and where child helps his family (family enterprises).
- Addition of a new category of persons called "adolescent". They are person between 14 and 18 years of age.
- Prohibits employment of adolescents in hazardous occupations as specified (mines, hazardous processes and inflammable substance).

- Empowers Union Government to add or omit any hazardous occupation from the list included in the Bill.
- Punishment for employing any child increased i.e. imprisonment between 6 months and two years (from earlier 3 months-one year) or a fine of 20,000 to 50,000 Rupees (from earlier 10,000 to 20,000 Rupees) or both.
- Proposes penalty for employing an adolescent in a hazardous occupation i.e. imprisonment between 6 months and 2 years or a fine of 20,000 to 50,000 Rupees or both.
- Empowers the government to make periodic inspection of places at which employment of children and adolescents are prohibited.
- Government may confer powers on a District Magistrate (DM) to ensure that the provisions of the law are properly carried out and implemented.
- Proposes establishment of child fund for child rehabilitation and development and further education of child

Positives:

- The Bill is aligned with the statutes of the International Labour Organisation (ILO) convention.
- It calls complete ban on child labour so they can get compulsory primary education in light of Right of Children to Free and Compulsory Education Act, 2009.
- Allowing children in familial enterprises has been made taking into consideration the socio economic condition of families in India.
- While child rights activists say it will promote child labour, the flip side argument is that children need to be trained in traditional arts at an early stage or they will not be able to acquire the required skills like weaving and stitching.
- Increased fines and jail terms will act as a deterrent for employing children.

Concerns:

- Allowing children to work in family enterprises is a contentious provisions. Small factories may shift their production to home based units and may continue to employ children in the garb of home based enterprises.
- The list of hazardous occupations has been reduced from 83 to 3 — mining, inflammable substances, and hazardous processes under the Factories Act, 1948, even these 3 could be removed by Government at its will.
- There is no regulation on workings hours of the child.
- Unregulated employment during childhood will have an adverse impact on the health of the child and this will inturn adversely affect the learning capacity of the child.

- The amendments do not completely ban employment of children. Prospects of economic benefits from employment can lead to increased drop out of children from schools.

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BILL's

1. The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016

Purpose of the bill:

- The Bill intends to provide for targeted delivery of subsidies and services to individuals residing in India by assigning them unique identity numbers, called Aadhaar numbers.
- The requirement of Aadhaar's statutory existence, came up due to recent Supreme Court judgments where it quashed Aadhaar as unconstitutional and turned it from being mandatory to voluntary. The major policies and services introduced by the Government got held up with that judgement.

Key provisions:

- Information to be submitted: To obtain an Aadhaar number, an individual has to submit his, (i) biometric (photograph, finger print, iris scan) and (ii) demographic (name, date of birth, address) information.
- Enrolment: At the time of enrolment, the individual will be informed of, (i) the manner in which the information will be used, (ii) the nature of recipients with

whom the information will be shared, and (iii) the right to access this information.

- Use of Aadhaar number: To verify the identity of a person receiving a subsidy or a service, the government may require them to have an Aadhaar number. If a person does not have an Aadhaar number, government will require them to apply for it, and in the meanwhile, provide an alternative means of identification.Aadhaar number cannot be a proof of citizenship.
- Composition of Unique identification authority: The UID authority will consist of a chairperson, two part-time members and a chief executive officer. The chairperson and members are required to have experience of at least ten years in matters such as technology, governance, etc.
- Authentication: The UID authority will authenticate the Aadhar number of an individual, if an entity makes such a request. A requesting entity (an agency or person that wants to authenticate information of a person) has to obtain the consent of an individual before collecting his information. The agency can use the disclosed information only for purposes for which the individual has given consent.
- Response to authentication query: The UID authority shall respond to an authentication query with a positive, negative or other appropriate response. However, it is not permitted to share an individual's finger print, iris scan and other biological attributes.
- Protection of information: Biometric information (specified by regulations) will be used only for Aadhaar enrolment and authentication, and for no other purpose. Such information will not be shared with anyone, nor will it be displayed publicly, except for purposes specified by regulations.
- Cases when information may be revealed: In two cases, information may be revealed:

  ->In the interest of national security, a Joint Secretary in the central government may issue a direction for revealing, (i) Aadhaar number, (ii) biometric information (iris scan, finger print and other biological attributes specified by regulations), (iii) demographic information, and (iv) photograph. Such a decision will be reviewed by an Oversight Committee (comprising Cabinet Secretary, Secretaries of Legal Affairs and Electronics and Information Technology) and will be valid for six months.

  On the order of a court, (i) an individual's Aadhaar number, (ii) photograph, and (iii) demographic information, may be revealed.

- Offences and penalties: A person may be punished with imprisonment upto three years and minimum fine of Rs 10 lakh for unauthorised access to the centralized data-base, including revealing any information stored in it. If a requesting entity and an enrolling agency fail to comply with rules, they shall be punished with imprisonment upto one year or a fine uptoRs 10,000 or Rs one lakh (in case of a company), or with both.
- Cognizance of offence: No court shall take cognizance of any offence except on a complaint made by the UID authority or a person authorised by it.

Issues and analysis:

- At the time of the introduction of the Bill, the government stated that "the Bill confines itself only to governmental expenditure." However, the Bill also allows private persons to use Aadhaaras a proof of identity for any purpose.
- Aadhaar may be in violation of right to privacy. A five-judge Bench of the Supreme Court is examining whether right to privacy is a fundamental right.
- Provisions regulating disclosure of private information under the Bill differ from guidelines specified under another law — The Indian Telegraph Act, 1885. The Bill differs from the guidelines for phone tapping in two ways. First, the Bill permits sharing in the interest of 'national security' rather than for public emergency or public safety. Second, the order can be issued by an officer of the rank of Joint Secretary, instead of a Home Secretary.
- Potential to profile individuals: The Bill does not specifically prohibit law enforcement and intelligence agencies from using the Aadhaar number as a link (key) across various datasets (such as telephone records, air travel records, etc.) in order to recognise patterns of behaviour.
- A provision says, "Courts cannot take cognizance of any offence punishable under the Act, unless a complaint is made by the UID authority, or a person authorised by it." This may present a conflict of interest, as under the Bill the UID authority is responsible for the security and confidentiality of identity information and authentication records. There may be situations in which members or employees of the UID authority are responsible for a security breach.
- The Bill empowers the UID authority to specify demographic information that may be collected. The only restriction imposed on the authority is that it shall not record information pertaining to race, religion, caste, language, records of entitlements, income or health of the individual. This power will allow the authority to collect additional personal information, without prior approval from Parliament.

- The bill permits the government to access the database if a district judge orders disclosure of information.This is very dangerous if one bears in mind that we have inadequately trained district judgesall over the country. District judges can now authorise access to Aadhaar data without any disclosure or discussion with the citizen affected — only the Aadhaar authority will have the right to contest the order if it is so inclined.
  While the intention of the Government is to better target beneficiaries of welfare schemes, the privacy of the citizens of the nation will have to be given paramount importance and respect.

2. Draft National Medical Commission Bill, 2016

- The NITI Ayog has introduced the National Medical Commission Bill, 2016 which would be extending to the whole country recently in order to create world class educational system.
- The bill seeks to repeal Indian Medical Council Act 1956 and be replaced by a body called National Medical Commission.

Objectives

- The bill seeks to ensure adequate supply of high quality medical professionals at both undergraduate and postgraduate levels.
- Encourage medical professionals to incorporate the latest medical research in their work and to contribute to such research.
- Provide for objective periodic assessments of medical institutions.
- Facilitate the maintenance of a medical register for India and enforce high ethical standards in all aspects of medical services.
- Ensure that the medical institutes are flexible enough to adapt to the changing needs of a transforming nation.

Highlights

- It has suggested a uniform National Eligibility-cum-Entrance Test (NEET) for admissions to under-graduate medical colleges.
- It provides for the establishment of National Medical Commission (NMC), which will serve as the policy-making body for medical education.
- It also provides for four autonomous boards for Under Graduate Medical Education, Post Graduate Medical Education, Medical Assessment and Rating and Registration and Ethics.
- The bill provides for a new Institutional Architecture for Regulation with a Medical Advisory Council (MAC) which will have representations from the States and Union Territories (UTs) for articulating the national agenda for medical education.

- The Council shall serve as the primary platform through which the states would put forward their views and concerns before the National Medical Commission (NMC) and shall help shape the overall agenda in the field of medical education & training.
- The Council shall advise the National Medical Commission (NMC) on the measures to determine, maintain and coordinate the minimum standards in the discipline of medical education, training and research.
- The Council shall advise the National Medical Commission (NMC) on measures to enhance equitable access to medical education.

3. Admiralty (Jurisdiction and Settlement of Maritime Claims) Bill 2016

Background:

India is a leading maritime nation and maritime transportation caters to about ninety-five percent of its merchandise trade volume. However, under the present statutory framework, the admiralty jurisdiction of Indian courts flow from laws enacted in the British era. Admiralty jurisdiction relates to powers of the High Courts in respect of claims associated with transport by sea and navigable waterways. The repealing of five admiralty statutes is in line with the Government's commitment to do away with archaic laws which are hindering efficient governance.

Provisions of the Bill

The Union Cabinet has given its approval to the proposal of Ministry of Shipping to enact Admiralty (Jurisdiction and Settlement of Maritime Claims) Bill 2016 and to repeal five archaic admiralty statutes.

The Bill consolidates the existing laws relating to admiralty jurisdiction of courts, admiralty proceedings on maritime claims, arrest of vessels and related issues. It also repeals five obsolete British statues on admiralty jurisdiction in civil matters, namely,

(a) The Admiralty Court Act, 1840
(b) The Admiralty Court Act, 1861,
(c) Colonial Courts of Admiralty Act, 1890,
(d) Colonial Courts of Admiralty (India) Act, 1891,
(e) The provisions of the Letters Patent, 1865 applicable to the admiralty jurisdiction of the Bombay, Calcutta and Madras High Courts.

Salient Features of Admirability Bill, 2016

This legislative proposal will fulfil a long-standing demand of the maritime legal fraternity. The salient features are as follows:-

- The Bill confers admiralty jurisdiction on High Courts located in coastal states of India and this jurisdiction extends upto territorial waters.
- The jurisdiction is extendable, by a Central Government notification, upto exclusive economic zone or any other maritime zone of India or islands constituting part of the territory of India.
- It applies to every vessel irrespective of place of residence or domicile of owner.
- Inland vessels and vessels under construction are excluded from its application but the Central Government is empowered to make it applicable to these vessels also by a notification if necessary.
- It does not apply to warships and naval auxiliary and vessels used for non-commercial purposes.
- The jurisdiction is for adjudicating on a set of maritime claims listed in the Bill.
- In order to ensure security against a maritime claim a vessel can be arrested in certain circumstances.
- The liability in respect of selected maritime claims on a vessel passes on to its new owners by way of maritime liens subject to a stipulated time limit.
- In respect of aspects on which provisions are not laid down in the Bill, the Civil Procedure Code, 1908 is applicable.

4. Arbitration and Conciliation (Amendment) Bill, 2015

The Bill amends the Arbitration and Conciliation Act, 1996.

Key Provisions:

- Under the Act, the relevant court for all arbitration matters would be a principal civil court or high court with original jurisdiction. ->The Bill modifies this to state that in the case of international arbitration, the relevant court would only be the relevant high court.
- Applicability of certain provisions to international commercial arbitration: Part I of the Act that included provisions related to interim orders by a court, order of the arbitral tribunal, appealable orders etc. only applied to matters where the place of arbitration was India.Under the Bill, these provisions would also apply to international commercial arbitrations even if the place of arbitration is outside India. This would apply unless the parties agreed otherwise.
- If any matter that is brought before a court is the subject of an arbitration agreement, parties will be referred to arbitration. The Court must refer the

parties to arbitration unless it thinks that a valid arbitration agreement does not exist.

- Interim order by a Court: The Act states that a party to arbitration may apply to a court for interim relief before the arbitration is complete.
- The Bill amends this provision to specify that if the Court passes such an interim order before the commencement of arbitral proceedings, the proceedings must commence within 90 days from the making of the order, or within a time specified by the Court. Further, the Court must not accept such an application, unless it thinks that the arbitral tribunal will not be able to provide a similar remedy.
- Public Policy as grounds for challenging an award: The Act permits the court to set aside an arbitral award if it is in conflict with the public policy of India. This includes awards affected by (i) fraud or corruption, and (ii) those in violation of confidentiality and admissibility of evidence provisions in the Act.
  The Bill modifies this provision to also include those awards that are (i) in contravention with the fundamental policy of Indian Law or (ii) conflict with the notions of morality or justice, in addition to the grounds already specified in the Act.
- Time period for arbitral awards: The Bill introduces a provision that requires an arbitral tribunal to make its award within 12 months. This may be extended by a six month period. If an award is made within six months, the arbitral tribunal will receive additional fees. If it is delayed beyond the specified time because of the arbitral tribunal, the fees of the arbitrator will be reduced, up to 5%, for each month of delay.
- Time period for disposal of cases by a Court: The Bill states that any challenge to an arbitral award that is made before a Court, must be disposed of within a period of one year.
- Fast track procedure for arbitration: The Bill permits parties to choose to conduct arbitration proceedings in a fast track manner. The award would be granted within six months.
  Alternate justice delivery systems are essential for relieving the judiciary from burden of burgeoning cases and for dispute resolution in a time bound manner.

5. Crackdown on Benami properties

What are Benami properties?

- Benami properties are registered in the name of third parties, fictitious or otherwise, by the owner who remains anonymous, making these properties obvious instruments to generate and hide wealth.

Why crackdown on Benami properties is important?

- Benami properties are usually those, that have been purchased using black money.
- Benami properties are a major avenue for investing and holding black money. Hence, curbing such properties will make it difficult to convert the black money into property and force the black money holders to look for alternate sources of investment.
- Clamping down avenues for storing black money will disincentivise generation of black money to certain extent.

Statutes to regulate Benami properties:

- Benami Transactions Act, 1988: The Act prohibits benami transactions and provides for confiscating benami properties.
- The Benami Transactions (Prohibition) Amendment Bill, 2015was introduced in LokSabha in May, 2015.The Bill seeks to amend the Benami Transactions Act, 1988.

Provisions:

- The Act defines a benami transaction as a transaction where a property is held by or transferred to a person, but has been provided for or paid by another person. The Bill amends this definition to add other transactions which qualify as benami, such as property transactions where: (i) the transaction is made in a fictitious name, (ii) the owner is not aware of denies knowledge of the ownership of the property, or (iii) the person providing the consideration for the property is not traceable.
- The Bill also specifies certain cases will be exemptfrom the definition of a benami transaction. These include cases when a property is held by: (i) a member of a Hindu undivided family, and is being held for his or another family member's benefit, and has been provided for or paid off from sources of income of that family; (ii) a person in a fiduciary capacity; (iii) a person in the name of his spouse or child, and the property has been paid for from the person's income.
- The Bill seeks to establish four authorities to conduct inquiries or investigations regarding benami transactions: (i) Initiating Officer, (ii) Approving Authority, (iii) Administrator and (iv) Adjudicating Authority.

- If an Initiating Officer believes that a person is a benamidar, he may issue a notice to that person. The Initiating Officer may hold the property for 90 days from the date of issue of the notice, subject to permission from the Approving Authority. At the end of the notice period, the Initiating Officer may pass an order to continue the holding of the property.
- If an order is passed to continue holding the property, the Initiating Officer will refer the case to the Adjudicating Authority. The Adjudicating Authority will examine all documents and evidence relating to the matter and then pass an order on whether or not to hold the property as benami.
- Based on an order to confiscate the benami property, the Administrator will receive and manage the property in a manner and subject to conditions as prescribed.
- The Bill alsoseeks to establish an Appellate Tribunalto hear appeals against any orders passed by the Adjudicating Authority. Appeals against orders of the Appellate Tribunal will lie to the high court.
- Under the Act, the penalty for entering into benami transactions is imprisonment up to three years, or a fine, or both. The Bill seeks to change this penalty to rigorous imprisonment of one year up to seven years, and a fine which may extend to 25% of the fair market value of the benami property.
- The Bill also specifies the penalty for providing false information to be rigorous imprisonment of six months up to five years, and a fine which may extend to 10% of the fair market value of the benami property.
- Certain sessions of courts would be designated as Special Courtsfor trying any offences which are punishable under the Bill.

Procedural precautions to be taken:

- The law says whenever a benami property is confiscated, all the rights and titles will vest with the Centre. Safeguards must make sure that this expropriatory power is used with extreme care.
- An efficient functioning of the judicial system is a must to lower disputes and cut needless delays in confiscation of benami properties.

Way forward:

- Curbing Benami property, is a positive step in the direction of curbing black money and shrinking the parallel economy.
- The statute has to be implemented in its word and spirit and any shortcomings in the statute has to be corrected pro-actively, to ensure that the purpose of the act is served.

6. THE BUREAU OF INDIAN STANDARDS BILL 2015

The parliament during the budget session passed The Bureau of Indian Standards Bill replacing the 30 year old act to promote a culture of products and services through compliance with Indian Standards and preventing the misuse of standard mark.

Need for this bill

- The standards and quality of a product play an important role in consumer protection and enhancing better quality of life.
- To make our manufacturers to produce better quality products to compete in the global market.

What is in the bill?

- The archaic Act of 1986 replaced – The bill to include goods, services and systems with services being introduced for the first time under the act.
- Establishment of BIS – The bill recognizes Bureau of Indian Standards (BIS) as a National Body with international recognition to represent country in multilateral and bilateral forums.
- BIS gets more power – The bill gives BIS the authority and power to withdraw sub-standard products from the market if the goods or articles do not conform to particular standards.
- Mandatory certification of certain goods - The Bill allows the central government to notify certain goods, articles, etc, which will need to compulsorily carry a standard mark. For example goods or articles necessary for public interest, safety of the environment, prevention of unfair trade practices, national security etc.
- Self–certification – The bill has the provisions for the self declarations of conformity of the Indian standards for certain categories.
- Increased business accountability - When a company commits an offence under the Bill, the persons responsible for or in charge of the company will be presumed guilty irrespective of whether the offence was committed without their knowledge, consent or connivance.
- Penalties - The penalty for improper use of the Indian standard mark will be a fine of up to 5 lakh rupees.
- Appeals - Appeals may be made to the Director General of the Bureau. A further appeal against the order of the Director General may then be made to the central government.
- The bill first time introduced the concept of conformity assessment with multiple certification bodies.

Other remarkable features

- A boost for Make in India – Strengthening the cornerstones of Make in India by making the products/services with no compromise on safety, quality and performance.
- This bill will supplement ease of doing business by limiting unnecessary field inspections and has provisions of self-declaration of conformity of the Indian Standards.
- BIS would get the legislative backing for the first time to formally represent India abroad.
- The scheme is applicable for larger industries as well as SME in adopting and implementing global standards, thereby creating level playing fields.
- The introduction of the concept of multiple third party certifications can provide more cost-effective administration and the resolution of consumer grievances will be speeded up.

7. Citizenship Amendment Bill, 2016

Proposed Amendments to Citizenship Act, 1955:

- The Bill amends the Citizenship Act, 1955 to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship.
- The Bill states that persons belonging to the minority communities in Pakistan, Afghanistan and Bangladesh who entered India with or without valid documents would now onwards cease to be treated as “illegal migrants” and be eligible to apply for Indian citizenshipunder the provision of naturalisation.
- Under the Act, one of the requirements for citizenship by naturalisation is that the applicant must have resided in India during the last 12 months, and for 11 of the previous 14 years. The Bill relaxes this 11 year requirement to six years for persons belonging to the same six religions and three countries.
- The Bill provides that the registration of Overseas Citizen of India (OCI) cardholders may be cancelled if they violate any law.

Positives:

- This amendment makes it easy to obtain India citizenship, for those fleeing religious persecution in mentioned three countries (Afghanistan, Pakistan and Bangladesh).

Issues:

- The Bill makes illegal migrants eligible for citizenship on the basis of religion. This is in violation of Article 14 of the Constitutionwhich guarantees right to equality and Article 15 of the Constitution which prevents the state from

discriminating among its citizens based on the religion, among other things as prescribed in the provision.

- This would mean, for instance, that the sizeable population of Hindu migrants from Bangladesh living in Assam would become citizens while Muslims who migrated to Assam from East Bengal, half a century ago would continue to be harassed as 'illegal migrants' from Bangladesh.
- India is not like Israel, which is a Jewish state, offering the "right to return" to Jews anywhere in the world. Since India is constitutionally secular, this amendment tries to bring 'Hindu Rashtra' into the legal framework through the backdoor. By inviting Hindus specifically to come back to Indian citizenship, it is a GharWapsi bill of sorts.
- Amendment which seeks to make minority communities such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan eligible for applying for Indian citizenship is in violation of the Assam accord of 1985. The cut-off date for the detection and deportation of foreigners as per the Assam accord is March 25, 1971 irrespective of religious affiliation.
- The Bill allows cancellation of OCI registration for violation of any law. This is a wide ground that may cover a range of violations, including minor offences (Ex. parking in a no parking zone).

Concerns of Assam people:

- Dilute the Assam Accord of 1985:– Post-accord, due to the insertion of Section 6A in the Citizenship Act, 1955, the cut-off date for citizenship in Assam is March 25, 1971. The proposed piece of new legislation seeks to extend this to December 31, 2014, rendering Section 6A infructuous.
- Puts the 'indigenous language and culture' at peril.

Religious colour to citizenship:

- The Bill looks to cater SanghParivar's long-running agenda of making India a 'Hindu state', and treating this country as the 'natural home' to Hindus all over the world.
- Seen as an effort of the Government to consolidate its Hindu constituency by wedging the religious divide in a very subtle way in the diverse demography of Assam. The Bill, straightaway sends the Muslim immigrants of the post-1971 stream to a stateless state while giving a safe passage to their Hindu counterparts.

Question of law:

- This Bill does not actually give citizenship to anybody. It only proposes to enable the post-1971 stream of non-Muslim migrants to apply for Indian

citizenship via the route of naturalisation - The Bill, shall remain just an enabling piece of legislation. Future governments may very well take shelter under Section 14 of the Citizenship Act to refuse what the present government is seemingly granting.

- Proposed amendments in the Citizenship Act, 1955, are likely to collide with the Section 6A therein, they violate Article 14 of the Constitutionguaranteeing equality before the law.

8. Consumer Protection Bill, 2015

Why in news?

Government has initiated a series of steps to strengthen consumer protection mechanism and also bringing a new comprehensive legislation to address various other issues.

What is consumerism?

- It is a social movement aimed to inform and protect the consumers from unfair and unhealthy restrictive trade practices by the manufacturers and suppliers.
- It is done by requiring practices such as honest packaging and advertising, product guarantees, and improved safety standards.

What is the need for the bill?

- About 40% of Indian's population will live in urban areas by 2025, accounting for more than 60% of the total consumption. India's rural market is also huge. To tap this huge market potential large numbers of companies are operating in various sectors.
- Most of these companies are successful in terms of profitability, market share and growth rates. High growth of business also brings with it more issues concerning the consumers such as unfair pricing, product safety, and quantity and quality assurance.

What is in the bill?

The Consumer Protection Bill, 2015, was introduced in LokSabha on August 10, 2015 and yet to be passed in both the houses of the Parliament.

- The Bill replaces the Consumer Protection Act, 1986.
- Definition of customer – It defines the consumer as any person who buys/uses a good or hires a service. This does not include one who obtains the good for resale or commercial purposes.
- Medium of transaction – It covers transactions through all modes including offline, online through electronic means, tele-shopping, or multi-level marketing.

- The rights of consumers include the right to
- Right to be protected against marketing of goods and services which are hazardous to life and property.
- Right to be informed of the quality, quantity, potency, purity, standard and price of goods or services.
- Right to be assured of access to a variety of goods or services at competitive prices.
- Right to seek redressal against unfair or restrictive trade practices.
- The bill creates Central Consumer Protection Authority (CCPA)to promote, protect and enforce the rights of consumers.
- The bill also creates Consumer Grievance Redressal Commissions (GRC) at the district, state and national levels.
- The function of the GRC is to receive complaints from customers whereas the CCPA will inquire into violations of consumer rights, investigate and take measure like launching prosecution, passing orders for recall of goods or discontinuation of unfair trade practices and issuing safety notices.
- Liability – If defects of a product results in any personal injury or property damage to a consumer, the manufacturer is liable in a product liability action.
- The Bill introduces mediation as a mode of consumer dispute resolution. Consumer Mediation Cells will be established for this purpose.
- Penalty – Any person who fails to comply with an order of GRC and CCPA would be liable for imprisonment up to three years, or with a fine up to 50,000 rupees.
- The CCPA can take suomotu action if products and services are not up to the standard.
- It also enable people to file complains in Consumers Courts online from any place in the country.

Other measures to strengthen Consumer Rights

- India is spending about 30-50 million US dollars on consumer protection annually and has initiated a number of consumer centric schemes.
- A portal called 'Grievance Against Misleading Advertisements (GAMA)' is launched to handle complaints of consumers relating to misleading advertisements, issuance of guidelines on direct selling, online case monitoring system in the Consumer Fora.
- Precious metal like gold and silver shall have to wear hallmarking for the larger interests of consumers. New Bureau of Indian Standards Act has been enacted for this purpose.

9. Electricity Amendment bill 2014

- The Bill amends the Electricity Act, 2003. It seeks to segregate the distribution network business and the electricity supply business, and introduce multiple supply licensees in the market.
- The Bill introduces a supply licensee who will supply electricity to consumers. The distribution licensee will maintain the distribution network and enable the supply of electricity for the supply licensee.
- The State Electricity Regulatory Commissions will grant supply licenses. Consumers can choose to buy electricity from any of the supply licensees in a given area of supply.
- If a supply licensee ceases to be a supply licensee, or is suspended, electricity will be supplied by a provider of last resort (POLR). The POLR will be a supply licensee designated by the State Electricity Regulatory Commission.
- The Bill defines renewable energy and provides for a National Renewable Energy Policy. It requires coal and lignite based thermal generators to produce 10% of thermal power installed capacity as renewable energy

Proposed amendment to the bill

- The Centre has put the proposed amendments to the Electricity act on the back burner, opting instead to work with state governments on measures to open up the power market and unlock latent demand through regulatory reforms.
- The amendments seek to segregate the distribution (carriage) and supply (content) businesses.
- This is expected to bring competition by having multiple distribution licences in an area, giving consumers freedom to choose their supplier.

When it was proposed?

- The amendment bill was introduced in LokSabha on December 19, 2014.
- It was referred to the parliamentary standing committee on energy.
- The panel submitted its report on May 7, 2015.
- The refreshed amendment bill, incorporating the committee's recommendations, will have to be cleared by the Cabinet before it can be re-introduced.

Analysis

- The Bill requires the presence of a government company as a supply licensee in an area of supply. This may affect competition.
- Currently, state distribution companies often keep tariffs lower than the cost of electricity. If this behaviour by a government owned supply licensee continues, it may drive out other supply licensees. This could defeat the objective of increasing competition.

- The Bill states that all revenue deficits in the electricity sector prior to the enforcement of the Bill will be recovered. The deficits were a result of several factors such as:
- state distribution companies not revising tariffs in a timely manner,
- an inefficient tariff structure and cross-subsidisation by high paying consumers, and
- high aggregate technical and commercial losses because of low investment, theft, pilferage, lack of metering and poor billing systems.
- Some of these issues could be addressed by the new scheme "UDAY".
- Some of these issues could be addressed by the new scheme "UDAY".
- Becoming a provider of last resort (POLR) may have financial implications on a supply licensee.
- However, the Bill does not envisage any financial support for these supply licensees. Some other countries provide financial support for a POLR.

10. The Enemy Property (Amendment and Validation) Fourth Ordinance, 2016

Background:

- The central government had designated some properties belonging to nationals of Pakistan and China as 'enemy properties' during the 1962, 1965 and 1971 conflicts.
- It vested these properties in the 'Custodian of Enemy Property', an office under the central government.
- The 1968 Act regulates these enemy properties.

Ordinance:

- The Enemy Property (Amendment and Validation) Fourth Ordinance was promulgated on August 28, 2016.
- It amends the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
- Previously three similar Ordinances had been promulgated in January, April and May 2016.

Key features:

- **Retrospective application:**The Ordinance is deemed to come into force on January 7, 2016, the date of promulgation of the first Ordinance. However, several of its provisions will be deemed to have come into effect from the date of commencement of the 1968 Act. Consequently, divestments (i.e., returning of property from the Custodian to the owner) and transfers of enemy property,

which had taken place before January 7, 2016, and violate the Ordinance, will be considered void.

- **Definition of enemy:**The 1968 Act defined an 'enemy' as a country (and its citizens) that committed external aggression against India (i.e., Pakistan and China).
  The Ordinance expands this definition to include: (i) legal heirs of enemies even if they are citizens of India or of another country which is not an enemy, (ii) nationals of an enemy country who subsequently changed their nationality to that of another country, etc.
- **Vesting of enemy property:**The 1968 Act allowed for vesting of enemy properties with the Custodian, after the conflicts with Pakistan and China.
  The Ordinance amends the Act to clarify that even in the following cases these properties will continue to vest with the Custodian: (i) the enemy's death, (ii) if the legal heir is an Indian, (iii) enemy changes his nationality to that of another country, etc.
  No laws and customs governing succession will be applicable to these properties.
- **Divestment:**The 1968 Act provided that the central government may order for an enemy property to be divested from the Custodian and returned to the owner or other person.
  The Ordinance replaces this provision, and allows enemy property to be returned to the owner only if an aggrieved person applies to the government, and the property is found not to be an enemy property.
- **Jurisdiction of courts:** The Ordinance bars civil courts and other authorities from entertaining cases against enemy properties. However, it allows **a person aggrieved by an order of the central government to appeal to the High Court**, regarding whether a property is enemy property. Such an appeal will have to be filed within 60 days (extendable upto 120 days).
- **Powers of the Custodian:**The 1968 Act authorised the Custodian to take measures to preserve enemy property, and maintain the enemy and his family if they are in India, from the income derived from the property. The Ordinance removes the duty to maintain the enemy and his family.

11. The Environment Laws Bill, 2015

The bill attempts to introduce a monetary penalties for environmental damage caused. It proposes amendments to the Environment(Protection) Act, 1986 and the National Green Tribunal Act, 2010

What are the drawbacks of the current act?

- In the present format, the act does not provide a comprehensive civil liability mechanism.
- Section 14 of the act provides that any case contravening this legislation would be "punishable with imprisonment for a term which may extend to five years".
- But the civil monetary penalty mentioned in the Act is a maximum of Rs. 1 lakh
- National Environment Policy, 2006 clearly identifies and indicates the need to move away from the criminal penalty mechanism existing in the environmental legal framework in India and towards a stringent civil liability mechanism based on the "polluter pays" principle.

What does the bill envisage?

- The Bill suggests that there are three kinds of environmental damage — substantial, non-substantial and minor.
- It focusses on environmental damage as pollution. It is only when we experience pollution that we become alert to environmental problems or damage.
- It adds that violation of "statutory environmental obligations" would count as environmental damage.
- The Bill suggests that the costs of substantial environmental damage, in the form of hazards and pollution, "may extend from 5 to 10 crore rupees" within a 5 km distance from a project site.
- For damage within 5 to 10 km from a site, the sum should be between Rs.10-15 crore and beyond 10 kilometres, Rs.15-20 crore.
- Continuing environmental damage would attract a fixed, per day penalty for all three categories.
- Apart from these there are also monetary penalty for non-substantial and minor damages to the environment.
- It also envisages an **adjudicatory body** which would determine
- The amount of damage caused to environment,
- The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the danger
- The repetitive nature of the damage
- The continuance of default
- The extent of injury caused or likely to be caused to the public or the other living creatures or plants and micro-organisms or property or public health
- The National Green Tribunal would entertain appeals from the adjudicatory body envisaged in the bill.

What are the shortcomings of the bill?

- The Bill focusses on environmental damage as pollution. While pollution is an important source of damage, all damage is not just pollution.
- Though it categorizes damage in to three groups, it does not elaborate on what the differentiating factors between these categories are.
- Several types of environmental damage that merit inclusion in the Bill that change the ecological integrity or character of an ecosystem are ignored. These include dredging activities that can fill up an important wetland or the cutting off of water supply.
- The role of distance as a factor in determining environmental damage, and its use in setting the extent of penalties is also inadequate. The underlying assumption seems to be that if there is pollution beyond 5 or 10 km, it must be of a serious nature and should attract heavier penalties. This may be true in some cases. But in several cases such as radiation or air pollution, proximity to the site of damage exacerbates damage and suffering, causing more harm through proximity, and not through distance.
- Further, the idea of pollution as damage is interlinked with our health. Legislation in other parts of the world has gone beyond human-centric definitions. Therefore, projects that fragment wild habitats or irretrievably damage ecosystems can be considered as factors that cause environmental damage.
- As there should be a minimum penalty to be paid for damaging the environment, it might be counter-intuitive to also prescribe the maximum amount. As the Bhopal gas tragedy showed us, environmental damage can last for generations, and it requires long term and sustained redressal.
- The proposal to set up a two-man adjudicating authority to decide on pollution and whether environmental damage has been caused is a matter of concern. Given the poor performance of pollution control boards, the question on whether environmental damage should be considered by government officials or independent courts assumes importance.
- Therefore there is a need for an independent regulatory body free from any political influence.
- Protecting the environment is a Fundamental Duty under the Constitution. How we begin to perceive the incommensurable damage caused to Nature and the environment requires more attention and application.

12. Financial Resolution and Deposit Insurance Bill

Background

A new draft law (Financial Resolution and Deposit Insurance Bill) for resolution of financial firms has recently been released for public consultation by the Ministry of Finance, government of India.

The proposed new regime seeks to protect consumers and public funds to the extent possible, while maintaining overall stability and resilience of the financial system.

Need For the Bill

- Unlike traditional insolvency where affected parties are limited to the creditors of the insolvent entity, the impact of failure of a financial firm, for instance, a large bank or an insurance company is much wider and can have a domino effect on the economy. Such a situation is by no means implausible or far-fetched.
- The filing of bankruptcy by Lehman Brothers on September 15, 2008, was the first in a series of events, which precipitated the worst economic crisis in recent memory.
- As the stakes in cases of failures of financial firms are very high, the authorities responsible for resolution need to be equipped with necessary and appropriate powers to deal with such crises.
- In this background, the proposed new law provides for an array of resolution tools, which can be used by the "resolution corporation", composed of representatives of the various regulators, the Ministry of Finance, as well as independent subject matter experts, in order to revive a failing financial firm.
- This piece discusses two of these proposed tools, namely "bail-in" and "transfer of assets to another entity".

Bail-in

- Bail-in is the corollary of the traditional tool of bailout.
- Bailout implies infusing funds from a public source into a failed financial firm that traditionally benefits the shareholders or uninsured creditors of the firm.
- As the government is often the primary source of such a liquidity injection, more often than not, taxpayers end up becoming financially liable for bailouts.
- As a consequence, the public authority or the government assumes most of the risk of failure that would otherwise be borne by the firm itself, and this reduces the incentive among the management of a firm to make sound and prudent business decisions, leading to the problem of moral hazard, widely touted as one of the central issues of the financial crisis of 2008.
- Experience shows that the comfort of the "too big to fail" status had led to a series of decisions which were misjudgment at best, and speculation at worst.

- Bail-in on the other hand moves away from the practice of using public funds and involves a number of restructuring mechanisms,

1. including the cancellation or modification of liabilities owed by a firm (including converting instruments from one class to another and creating new securities),
2. cancellation of contracts; and for central counter parties,
3. haircuts on the margins and collaterals, and
4. issuance of equity to the creditors.

- The tool of bail-in makes it incumbent upon creditors of the firms to assume at least part of the risk.
- Additionally, as bail-in impinges upon the substantial rights of creditors, it is imperative that this power is adequately circumscribed.
- The draft Bill envisages a host of safeguards, which must necessarily be complied with during the operation of this tool.
- Only certain specific types of debts can be written down, and liabilities like deposit insurance, wages and salaries, secured liabilities etc have been excluded from its purview.
- Further, the writing down of debts has to be done in accordance with the creditor hierarchy, and with due regard to "key attributes" identified by the Financial Stability Board (FSB), including the principle of "no creditor worse off than in liquidation", continuity of essential services, and protection of client funds.

Transfer of assets to another entity

- This tool of resolution can assume a number of forms.
- For instance, it can be done in the form of a simple sale or purchase and assumption.
- Purchase and assumption is one of the most common modes of revival of a failing financial firm.
- The resolution corporation is responsible for overseeing such a transaction, which is carried out on the terms agreed between the resolution corporation and the third party.
- The features of this tool, as identified by the FSB, have been incorporated into the Bill, and include the power to transfer selected assets and liabilities of a non-viable firm to a third party, or to a bridge institution formed for this purpose. The distinctive feature of this transfer is that it does not require the consent of interested creditors or other parties.
- Segregating viable assets of the firm would also enable the resolution corporation and investors to take informed decisions about its health, and the exact amount of risk that is entailed.

- This may also serve the additional purpose of the non-viable assets to be liquidated while allowing continuity as a going concern.
- The draft Bill also provides for a number of other resolution tools such as

1. creation of a bridge institution,
2. merger or amalgamation,
3. acquisition,
4. liquidation, or any combination of these.

- The objective is for the resolution corporation to be in a position to take over the reins of the firm and the powers of the individual regulators, to direct an orderly resolution, by the time the firm reaches a stage of unviability and enters the process of resolution.
- These tools are by no means exhaustive, and must be applied keeping in mind various factors, such as a firm's type, peculiar characteristics, risk profile, the portfolio of creditors and investors, among others.

Conclusion

Ultimately, the aim of this law is to steer away from a "one-size-fits-all" formula and devise the best possible solution, which takes into account the varied interests of creditors and consumers, while preserving the overall financial stability of the national economy.

13. Draft Geo-Spatial Information Regulation Bill, 2016

The bill, put forward by Ministry of Home Affairs seeks to ensure the security, sovereignty and integrity of India by regulating the collection and publication of geospatial information pertaining to India.

What is Geospatial information?

- Includes "geospatial imagery or data" or "graphical or digital data" pertaining to the territory of India.
- This would include wide varieties of data - visual or otherwise, acquired through any means, including satellites, UAVs, drones, balloons, cameras or any GPS enabled device, as well as the representation of this data, in the form of maps, charts and print materials that depict natural or manmade features drawn to a geographic scale.

Provisions of the Bill:

- Any creation that has to do with any of the above mention geospatial information will need permission of a government body called **"Security Vetting Authority"**.

- "Security vetting Authority" - will be established by the Union Government and it will grant licenses to the individuals or organizations who want to use geospatial data.
- The authority will check the content and data and make sure that it complies with the national policies and is not against national sovereignty, safety and integrity.
- The Security Vetting Authority shall consist of an officer of the rank of joint secretary to the government of India or above as chairman and two members, one, a technical expert and the other, a national security expert.
- **Applicability:**This bill applies to all citizens of India, whether located within or outside India. It also applies to foreigners in India or aboard ships or aircraft registered in India. The bill does not apply to any Indian Central and State Government agencies.
- **Penal provisions: Acquisition of such data without license,illegal dissemination, publication or distribution of geospatial information of India and use of geospatial information of India outside India would be considered illegal** and would result in a fine in range of Rs.1 Crore to Rs.100 Crore and /or imprisonment for a period up to seven years.

Positives of the Bill:

- Would ensure proper depiction of boundaries of India - all entities are required to use and display correct boundaries of the country. This would ensure that the International map service providing agencies correctly depict India's map – Ex. Google maps often depicts Jammu and Kashmir map wrongly by excluding PoK and Aksai Chin.
- The bill will regulate mapping of Vital Areas (VAs)/Vital Points(VPs) in the interest of national security. Ex. Army Bases and Defence installations.

Concerns with the Bill:

- The bill provides for licensing, for all persons and entities who create, collect, analyse and disperse Geospatial data.This provision is contentious,as it even makes use of maps by smartphone user without approval of the "Security Vetting Agency" illegal. Ex. It is impractical for each smartphone user to get a licence.
- It will see all business dependent on real-time navigation as illegal. Ex. Ola, Google maps and so on.
- Larger companies have money to go through security vetting, but upstarts may not have it so easy.

- The bill in its current form, regulates much more than just security installations. In fact it does not mention defence installations at all, and instead clamps down on maps of all kinds, from street maps to humanitarian disaster maps, from weather maps to maps that teach children geography.
- The bill gives the government powers to ensure surveillance and monitoring of our personal data to ensure compliance with the regulations. This also allows security agencies to search and confiscate phones, computer and other personal devices if they suspect someone may have broken the regulations of the act.
- When individuals are in emergency situations like disaster, they often require geospatial information (e.g. locations of relief camps during the Chennai floods). This bill makes it difficult for individuals/organisations to freely generate and share such information.

Larger implications:

- When we use Uber/Ola by marking our location on a map, we are creating geospatial information. When we "share your location" on WhatsApp with our friend, we are creating and disseminating geospatial information. We, even as an end user of these apps and services, fall within the scope of multiple provisions of this Act, and hence need a licence under this act. Technically, the bill will make sharing of our location with a third party without prior government approval illegal.

  Though the intentions of the bill are to ensure national security and protect the territorial sanctity of the country in geospatial information, the provisions of the bill are worded too vague, covering a wide range of operations. The provisions have to be fined tuned to make it more specific to serve the purpose as mentioned by the Government.

14. Institutes of Technology Amendment Bill, 2016

The Parliament has passed the Institutes of Technology (Amendment) Bill, 2016 to set up six new Indian Institutes of Technology (IITs).

Need for this bill

- There is an urgent need to check deterioration in the quality of education in the country.
- To improve standing of Indian Education Institutions in the global ranking by increasing the quality and number of institutions of national importance.
- To make funding available to the educational institutions.

Features of the bill

The Bill seeks to amend the Institutes of Technology Act, 1961, which declares certain Institutes of Technology as institutions of national importance.

- Six new IITs will be in Palakkad (Kerala), Tirupati (AP), Goa, Dharwad (Karnataka), Bhilai (Chhattisgarh) and Jammu (Jammu and Kashmir).
- It also seeks to bring the Indian School of Mines, Dhanbad within the ambit of the Act.
- All these institutions will be declared as institutions of national importance.

Other measures to improve the higher education

- Government has formed High Education Financial Agency (HEFA) to upgrade the infrastructure of the institutions.
- Government's new initiative "SabkoShikshaAcchiShiksa" (Good Education to All).
- Full waiver of fees for students from SC and ST community, Below Poverty Line category and physically challenged in the Indian Institute of Technology and National Institute of Technology.
- Government has started IIT-PAL (IIT Professor Assisted Learning), which would provide online coaching by IIT professors and other subject experts for free in order to address the issue of high fee of IIT coaching class entrance exams.
- Government has increased the budget allocation to fund the IIT (from 3855 cr to 4035 cr).
- To encourage Start Ups, students of IIT can give their hostel address if they start a new venture. This is to achieve Make in India concept.
- To give a boost to research, Government has supported IMPRINT project.
- IMPRINT- IMPacting Research INnovation and Technology, the pan-IIT and IISC joint initiative to address the major science and engineering challenges.

Unresolved issues

- There is an issue to address the financial resources problem before a new IIT is announced.
- It is difficult to acquire large vast of land for new IIT which will delay the construction for many years. Without addressing this issue, there is no purpose of opening many institutes in the country.
- There is a need to reduce the control of government and increase the industry's responsibility over the institutes of national importance.
- A full time director and faculty should be recruited to overcome the government's interference in the institutions and to address the management problem.

Way forward

- The government should go for collaboration with top institutes abroad like US and UK to upgrade the quality and global ranking.
- The IITs should be asked to focus in rural technologies with a view to promote innovation in agriculture sector and Digital India programme.
- The IITs should be encouraged to decipher ancient texts on science and technology to improve the wisdom of our country.

15. INTERNATIONAL CHILD ABDUCTION BILL, 2016

Indian Diaspora is spread all over the world .There is an ever increasing trend on transnational marriages and migration. So has **increased the issue of transnational inter-spousal child custody dispute and increased cases of child being abducted by one of the parents.**

The major issues viz. India

- India is **NOT** a signatory to Hague convention on Civil Aspects of International Child Abduction-which desires **"to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access"**
- When families get split across countries, conflicting child custody litigations are initiated under the separate legal systems of different nations

Draft of the Civil Aspects of International Child Abduction Bill, 2016

- Considers the removal to or the retention of a child in India to be wrongful if it is in breach of rights of custody attributed to a person, an institution, or any other body, either jointly or alone, at a place where the child was habitually resident immediately before the removal or retention
- The watershed verdict of the Supreme Court in Surya Vadanan v/s State of Tamil Nadu (2015)
- The principle of Comity of Courts and nations must be respected and the best interest of the child should apply
- The principle of "first strike", namely, whichever court is seized of the matter first, ought to have prerogative of jurisdiction in adjudicating the welfare of the child
- The rule of Comity of Courts should not be jettisoned except for compelling special reasons to be recorded in writing by a domestic court
- Interlocutory orders of foreign courts of competent jurisdiction regarding child custody must be respected by domestic courts

- An elaborate or summary enquiry by local courts when there is a pre-existing order of a competent foreign court must be based on reasons and not ordered as routine when a local court is seized of a child custody litigation
- The nature and effect of a foreign court order, reasons for repatriation, moral, physical, social, cultural or psychological harm to the child, harm to the parent in the foreign country, and alacrity in moving a concerned foreign court must be considered before ordering return of a child to a foreign court

Way ahead and conclusion

- There is an urgent need of a codified bill to protect the rights of abducted children
- India's accession to the Hague Convention would resolve the issue since it is based on the principle of reverting the situation to status quo ante

16. Draft Bill of 'Major Port Authorities Act, 2016

- The Ministry of Shipping has prepared a draft Bill "Major Port Authorities Act, 2016" to replace the Major Port Trusts Act, 1963, with a view to promote the port infrastructure and facilitate trade and commerce.
- The proposed bill aims at giving more autonomy and flexibility to the major Ports and to bring in professional approach in their governance. This will help to impart faster and transparent decision making which will benefit the stakeholders.
- The proposed Bill was earlier uploaded on the website of the Ministry of Shipping for receiving comments from various stakeholders.
- Based on the suggestions/comments from the stakeholders, the draft Bill has been modified and uploaded in the Ministry of Shipping's website.

The salient features of the new Bill are

- Composition of board has been simplified. The board will consist of 10 members including 3 to 4 independent members instead of 17-19 under the present Port Trust Model. Provisions has been made for inclusion of 3 functional heads of Major Ports as Members in the Board apart from a Government Nominee Member and a Labour Nominee Member.
- The regulation to tariff by Tariff Authority for Major Ports (TAMP) has been removed. Future PPP operators will be free to fix tariff based on market conditions and notify the Port Authority. The Board of the Port Authority has been delegated the power to fix the scale of rates for other port services and assets like land.

- Port related and non –port related use of land has been defined. A distinction has been made between these two usages in terms of approval of leases. The Port Authorities are empowered to lease land for Port related use for upto 40 years and for non-port related use upto 20 years beyond which the approval of the Central Government is required. For PPP projects the tenure of the lease of land would be as per the PPP policy of the Government.
- The need for Government approvals for raising loans, appointment of consultants, execution of contracts and creation of service posts have been dispensed with. The Board of Port Authority have been delegated power to raise loans and issue security for the purpose of capital expenditure and working capital requirement.
- Concept of internal audit of the functions and activities of the Central Ports has been introduced on the lines of Companies Act, 2015.
- An independent Review Board has been proposed to be created to carry out the residual function of the erstwhile TAMP for Major Ports, to look into disputes between ports and PPP concessionaires, to review stressed PPP projects and suggest measures to review stressed PPP projects and suggest measures to revive such projects and to look into complaints regarding services rendered by the ports/private operators operating within the ports would be constituted. At present, there is no independent body to look into the above aspects and the Review Board will reduce the extent of litigation between PPP Operators and Ports.
- Provisions of CSR & development of infrastructure by Port Authority have been introduced.
- The status of Port Authority will be deemed as 'local authority' under the provisions of the General Clauses Act, 1887 & other applicable Statutes so that it could prepare appropriate regulations in respect of the area within the port limits to the exclusion of any Central, State of local laws.

  After inter-Ministerial consultation, and approval of Cabinet, the Bill shall be placed before the Parliament for consideration.

TAMP

- Tariff Authority for Major Ports (TAMP) is a multi-member statutory body with a mandate to fix tariffs levied by major port trusts under the control of Union Government and private terminals therein.
- It is mandated not only to fix the rates but also the conditionality's governing application of the rates.
- Section 47-50 of the Major Port Trust Act, 1963 provides the legal backing for TAMP.

17. Medical Treatment of Terminally-Ill Patients Bill, 2016

What are advanced medical directives?

An advance medical directive, also known as living will, personal directive, advance directive, medical directive or advance decision, is a legal document in which a person specifies what actions should be taken for their health if they are no longer able to make decisions for themselves because of illness or incapacity.

What is euthanasia?

- Euthanasia is the termination of a very sick person's life in order to relieve them of their suffering.
- In many cases, it is carried out at the person's request but there are times when they may be too ill and the decision is made by relatives, medics or, in some instances, the courts.

What are the types of euthanasia?

- **Based on consent**
- **Voluntary Euthanasia** – When euthanasia is conducted with the consent of the patient.
- **Non-Voluntary Euthanasia** – If the consent of the patient is unavailable. Examples include patient in coma or child euthanasia.
- **Involuntary Euthanasia** – Euthanasia conducted against the will of the patient. Witnessed in autocratic regimes where the terminally ill, people with disabilities or old people are "euthanized to eliminate undesirable defective people from society". Involuntary euthanasia is widely opposed and is regarded as a crime in all legal jurisdictions.
- **Based on method of action**
- **Active euthanasia** – The use of lethal substances or forces. e.g administering a lethal injection
- **Passive euthanasia** – The withholding of common treatments or means necessary for the continuance of life. e.g failing to keep their feeding tube going.
- **Indirect euthanasia** – This means providing treatment (usually to reduce pain) that has the side effect of speeding the patient's death. Since the primary intention is not to kill, this is seen by some as morally acceptable.
- Euthanasia has always been fraught withmoral, social, and religious tensions acrossjurisdictions.
- Ministry of Health and Family Welfare released a draft Medical Treatment of Terminally-Ill Patients (Protection of Patients and MedicalPractitioners) Bill, 2016 regarding euthanasia.

What are the provisions of the bill?

- The bill states that every competent patient, including minors aged above 16 years, has a right to take a decision and express the desire to the medical practitioner attending on her or him.
- For withholding/withdrawing a medical treatment
- For starting or continuing a medical treatment on himself or her. This gives legal recognition to passive euthanasia.
- The Bill makes such a decision to be binding on the medical practitioner. The practitioner has to inform the spouse, parents or any other close relative of the patient and
- The practitioner should abstain from carrying out the decision for a period of three days after informing them.
- The Director-General of health services should create a medical panel for the purposes of the act.
- If the decision was taken by the next of kin, including spouse, parents or sibling of the competent/incompetent patient, should approach the High Court for the grant of permission for the intended decision. The confidentiality of the patient, the medical practitioner, the relatives are to be maintained throughout the course of the case.
- The Medical Council of India has been asked to provide guidelines for the medical practitioners with periodical reviews.

What are the shortcomings of the bill?

- **Rights issue** -The 196th report recommended that an advance directive in exercise of the right to refuse medical treatment be overridden because of the fear that such directives would lead to unnecessary litigation.
- Rights are not wholly taken away because there is a danger that they will be misused, especially if this so-called danger involves is moving the courts frequently for their enforcement.
- The draft Bill negates the basic common law rights of a patient to autonomy over her own body and the determination of what treatment she is willing to undergo, thus denying the patient's fundamental right to life and liberty.
- Thereforethe solution lies in a strong law that pre-empts litigation, rather than in refusing to give effect to the right altogether.
- **Absence of safeguards** - A valid advance directive would have to be in writing and executed in the presence of witnesses and the audio-visual recording of the entire process should be done. If doubts about the validity of the directive were to arise, such a recording might prove useful in resolving them.

- **Irrationality** - The Bill creates an irrational distinction between patients who are competent and incompetent patients. The Bill states that the decision of the competent patients to refuse such treatment is binding on their medical practitioners. But it requires medical practitioners or relatives to move the High Court for permission to withdraw treatment in case of incompetent patients. This totally ignores the decision of patient taken earlier when they are competent.
- The time at which the decision was made to refuse or request the withdrawal of treatment cannot be a rationale for distinguishing between these categories of patients, so long as such decisions were taken freely, fully informed, and not altered fundamentally since. Therefore apart from being an infringement of the right to life under Article 21, the classification stands the risk of being struck down as unreasonable and therefore a violation of the right to equality under Article 14.
- **Time frame** - The choice of the High Court as a forum to obtain permission for the withdrawal of treatment from incompetent patients imposes an unrealistic burden on medical practitioners as well as relatives and does not take into account the fact that High Courts are unlikely to be able to deliver swift judgment in such cases.
- Still, given that the Bill is in the draft stage, there is hope that the government will see the wisdom in recognising advance directives made by individuals regarding their treatment, and put in place a mechanism for their enforcement.

18. Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016.

The Union Cabinet has approved the Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016. The Bill will now be sent to States/UTs to adopt the bill as it is or after modifying its provisions as per their requirements.

Aim

The Model Shops and Establishment bill is a welfare legislation which intends to bring equality in regulation of employment and conditions of service throughout the country.

The Model bill is aimed at

(i) improving the working conditions of workers,
(ii) creating many more job opportunities for women and
(iii) providing favourable environment for doing business.

Features

- The Model bill shall apply to the shops and establishments employing ten or more workers except manufacturing units.
- Women to be permitted during night shift, if the provision of shelter, rest room ladies toilet, adequate protection of their dignity and transportation etc. provided.
- No discrimination against women in the matter of recruitment, training, transfer or promotions.
- The Bill provides for freedom to operate 365 days in a year and opening/closing time of establishment.
- Bill provides for an one common Registration for establishments through online in a simplified procedure.
- It empowers Government to make rules regarding adequate measures to be taken by the employer for the safety and health of workers.
- The Model Bill seeks to propose a number of welfare provisions including provisions for drinking water, lavatory, crèche, first – aid and canteen facilities and employer's responsibility for health and safety of the workers.
- It puts a cap that employees can work for a maximum of 9 hours a day and 48 hours a week, and up to a maximum overtime of 125 hours in a quarter.
- It exempts highly skilled workers (for example workers employed in IT, Biotechnology and R&D division) from daily working hours.
- It would bring about uniformity in the legislative provisions across the country and facilitate the ease of doing business and generate employment opportunities.
- It provides paid holidays for the workers which will be 18 days Earned Leaves, 8 days Causal Leaves, weekly holiday and 5 festival leaves in addition to National holidays.

Impact

- The provision of operating 24X7 is expected to boost up the retail market across the country and will give customer flexibility and convenience to shop any time.
- The enhancement of working hours with adequate provision for protection of the workers will give rise to requirement for additional manpower which will result in additional employment.
- It is expected that the Model law if adopted by State will lead to growth in jobs especially in the retail, IT, hospitality and services sector.
- The Model bill would help the small shops from the restriction of opening and closing working hrs and weekly close day.

- The uniformity in legal provisions across States/UTs will enable the employers to have uniform HR and leave policies across all establishment in various States and UTs.
- It would promote the fair competition among the States in improving the Governance and ease of doing business.

19. The Motor Vehicles (Amendment) Bill, 2016

The Motor Vehicles (Amendment) Bill, 2016 was introduced in LokSabha in August 2016 by the Minister of Road Transport and Highways, Mr. Nitin Gadkari. The Bill seeks to amend the Motor Vehicles Act, 1988.

Aim

The government is committed to reduce the accidents and fatalities by 50% in five years.

The Act provides for standards for motor vehicles, grant of driving licenses, and penalties for violation of these provisions.

Features

- The Bill increases the penalties for several offences under the Act. For instance, the maximum penalty for driving under the influence of alcohol or drugs has been increased from Rs 2,000 to Rs 10,000.
- Stricter provisions are being proposed in respect of offences like juvenile driving, drunken driving, driving without a licence, dangerous driving, over-speeding, overloading etc.
- The provision of the bill includes an increase in compensation for Hit & Run cases from Rs. 25000 to Rs. 2 lakhs. It also has provision for payment of compensation uptoRs 10 lakh in road accidents fatalities.
- It proposes to improve the transport in the country by permitting the states to grant exemptions in Stage carriage and contract carriage permits to promote last mile connectivity.
- It also proposed to improve the delivery of services to the stakeholders using e-Governance through enabling online learning licenses, increasing validity period for driving licenses and doing away with the requirements of educational qualifications for transport licenses.
- To help the road accident victims, Good Samaritan guidelines have been incorporated in the Bill. Good samaritan will not be liable for any civil or criminal action for any injury to or death of an accident victim.
- The Bill also proposes to mandate the automated fitness testing for the transport vehicles with effect from 1st October 2018.

- This would reduce corruption in the Transport Department while improving the roadworthiness of the vehicle.
- To bring uniformity of the registration and licensing process, it is proposed to create National Register for Driving Licence and National Register for Vehicle registration through "Vahan" & "Sarathi" platforms.
- To facilitate transport for Divyang (persons with disability), the bottlenecks have been removed for getting driving licenses as well as alterations in the vehicles to make it fit for use of Divyang.
- The Bill allows the central government to order for the recall of motor vehicles if a defect in the vehicle may cause damage to the environment or other road users.
- The Bill requires to develop a National Transportation Policy, in consultation with the states.

Why India needs Road Transport reforms?

- Roads play a very important role in the transportation of goods and passengers for short and medium distances.
- It is comparatively easy and cheap to construct and maintain roads. Road transportation in India faces a number of problems.
- The most important problem of all is the rapidly growing population of motor vehicles and increasing commerce.
- Every year 5 lakh road accidents are reported in the country in which 1.5 lakh people lose their lives.
- The number of registered vehicles increased from 306 thousand in 1950-51 to 58,863 thousand in 2001-02, thereby registering about 210 times increase in a span of half a century.
- Thus carrying capacity of our roads has not been able to keep with the increase in vehicles. This has led to traffic jams, delays, accidents and environmental pollution.
- Another one in the list is India's road length, it is about 75.01 km per 100 sq km of an area which is desperately low as compared to countries like Japan (294.6 km) and Austria (131.2 km).
- Another problem is that a little less than half of the roads (40%) are unsurfaced. They can be used only in fair weather and become muddy and unfit for transportation during the rainy season.
- A country needs an effective and efficient transportation system to attain economic development through better accessibility to markets, employment, and additional investments. Also, citizens who are deprived of transportation infrastructure miss out on several economic opportunities.

- Thus the government should push for a comprehensive move towards a sustainable development of road transport and safety.

20. DRAFT NATIONAL WATER FRAMEWORK BILL

Background:

- National Water Framework Bill, 2016 aims to provide uniform national legal framework to manage water in a better and efficient way.
- The comprehensive draft Bill proposes model law for all states. However, water being a State subject under VII Schedule of constitution the law will be not binding on States for adoption.
- The water shortage problem is escalating and country has witnessed acute drought situation in certain parts.
- In the absence of institutional arrangement there are inter-state water disputes because states do not their contributions to a river's catchment area to resolve conflicts.

Key provisions:

- Every person has a right to sufficient quantity of safe water for life within easy reach of the household regardless of his/her socio-economic factors.
- All basin states have equitable rights over the use of river water provided such use does not violate the right to water for life of any person in the river basin.
- States must recognise the principle that the rivers are not owned by the basin-States.
- All the basin States are equal in rights and status, and there is no hierarchy of rights among them. Here equality of rights means not equal but equitable shares in river waters.
- Managing water at river basin-level and right measurement of State's contribution to river system to - in order to resolve inter-state water conflicts.
- Establishing River Basin Authority (RBA) for each inter-State basin to ensure optimum and sustainable development of rivers and valleys.
- Establishing institutional arrangements to deal with inter-state water disputes in order to "obviate" disputes through negotiations, mediation or conciliation.
- Suggests a three-layer system dispute resolution mechanism as adopted in Mekong basin – political at the highest level , coordinative at the second level and a delivery apparatus at the third level
- The bill uses the expression " Appropriate Government" which has different connotations-

➔The Central Government in relation to interstate rivers and river valleys.
➔The State Government in relation to rivers confined to the territory of a State

➔Also talks about devolving powers to local bodies

- Local governing bodies such as Panchayats, municipalities, corporations, and water users' associations, wherever applicable, are to be empowered and involved in the planning and management of projects
- Proposes other mechanisms such as National water quality and footprint standards, integrated river basin development and management plan and Graded pricing system.

Positives:

- The Bill proposes an institutional mechanism for resolution of river water disputes.
- It proposes a "river basin" approach to water conservation. This would help in better outcomes as the previous isolated and scattered conservation methods have been proved ineffective. Benefits from one conservation initiative in as isolated manner was being neutralised by destruction at another place in the river basin. This Bill seeks to correct such discrepancies.
- Ensures right to sufficient quantity of safe water for all persons.
- Proposes local bodies involvement in water conservation projects – This ensure grass root level participation and thus better outcomes can be expected.

Concerns:

- The Bill only proposes model law for all states. However, water being a State subject under VII Schedule of constitution the law will be not binding on States for adoption.
- Though the Bill proposes a mechanism for resolution of river water disputes, there is no clarity on what power the dispute resolution body would have with respect to implementation.
- Though the bill proposes a Basin approach to water conservation under a body constituted for the purpose, it is doubtful whether the states would be willing to give up their constitutional powers with respect to management of water resources.

21. The Prevention of Corruption (Amendment) Bill, 2013 and proposed 2015 amendments

Highlights:

- The Prevention of Corruption (Amendment) Bill, 2013 amends thePrevention of Corruption Act, 1988. Certain amendments to the Billwere circulated by the government in 2015.

- The 1988 Act defines taking a bribe by a public servant as accepting any reward other than a salary for performing one's official act. The2015 amendments replace this to cover acts where a public servant accepts any **undue advantage** other than legal remuneration.
- No provision for exceptions to taking a bribe were included in the original 1988 Act. In 2015 amendment, **if a person does not perform a public function dishonestly, then receiving benefits would not qualify as taking a bribe**.
- Under the Act, a bribe giver is charged with abetment. The 2013 Bill makes giving a bribe to a public servant a direct offence. The 2015amendments add that if a person gives a bribe to assist law enforcement authorities, he will not be punished.
- The Act defines criminal misconduct to covers six types of offences including: (i) abuse of position; (ii) use of illegal means; (iii) disregard to public interest. The 2013 Bill retains only two offences: (i) misappropriating property; and (ii) amassing disproportionate assets.
- Under the 2015 amendments, prior sanction from the Lokpal or Lokayukta must be obtained before investigating a public servant.

Issues and Analysis:

- A public servant will not be charged with taking a bribe if he proves that he did not 'perform his public functions dishonestly'. This implies that if a public servant charged with taking a bribe proved that he performed his public functions honestly, he would not have committed the offence. The meaning and implications of this provision is unclear.
- The 2015 amendments define terms like 'undue advantage' and what would constitute 'improper performance ofa public function'. However, the term 'performance of a public function dishonestly' has not been defined in the1988 Act, the 2013 Bill or the 2015 amendments. In the absence of a definition of what could constitute 'dishonest performance of a public function', the types of actions of a public servant that would qualify as 'honest' would be wide and open to interpretation
- The 2013 Bill makes giving a bribe a direct offence. There are diverging views on whether bribe giving under all circumstances must be penalised. Some have argued that a coerced bribe giver must be distinguished from a collusive bribe giver.
- The requirement of prior sanction for investigation may be considered necessary to protect a public servant from harassment. However, it could delay investigation into genuine cases of corruption. The Supreme Court had also

observed that such a provision could affect the efficiency of the investigation process.

- The Lokpal and Lokayuktas in some states, have not been constituted. This may affect the obtaining of prior sanction for investigation.

22. Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016

- The women and child development ministry of recently put up the draft of the TraffickingPersons (Prevention, Protection and Rehabilitation) Bill 2016.
- Trafficking is the third largest organised crime and time has now come to deal with it through a single comprehensive act.
- The government is holding discussions with NGOs on the proposed bill aimed at addressing various aspects of human trafficking.

Provisions of the draft bill

- The Bill contains commitments on addressing prevention, protection, and rehabilitation of trafficked victims by introducing mandatory registration of placement agencies
- Treating trafficking as an organised crime rather than a law enforcement problem, building anti-trafficking committees at district, state, and central level, creation of a central-level special investigative agency and treating survivors as victims.
- Importantly, a trafficker would be considered guilty until proven innocent.
- Anti-Trafficking committees: Shall be constituted at the District and the State level for performing such functions and duties in relation to prevention, rescue, protection, medical care, psychological assistance, skill development and need based rehabilitation of victims.
- Central Anti – Trafficking Advisory Board shall oversee the implementation of the Act and advice the State Governments on matters relating to prevention of trafficking, protection and rehabilitation of victims.
- The Central Government shall constitute a Special Agency for investigation of offences under the provisions of the Act.
- Protection homes and Special homes shall be established and duly registered under this Act in a manner prescribed by appropriate Government.
- State Governments shall frame a Rehabilitation and Social integration programmes for the rescued persons.
- Special Courts: The State Government shall in consultation with the Chief Justice of the High Court specify for each district, a Court of Session to be a Special Court for trying offences under the Act.

Why Children are trafficked?

- Vulnerability: Children form a vulnerable section of the society, who at times, due to their misplaced belief of better life away from family or due to family circumstances like poverty, emerge as easy targets for the traffickers.
- Demand for child labour: Due to availability at low wages and ability to perform good amount physical work, children are often targeted for employment in domestic work and unorganised sectors. Ex. Bonded labour, agricultural labour, domestic work, construction work, carpet industry, garment industry as well as other sites of work in the formal and informal economy.
- Demand for child sex workers: Demand for young girls in sex trade provides an incentive for human traffickers to target young girls.
- Economic deprivation: At times due to poverty, even parents resort to selling their children for money.

Impact of Trafficking

- These, trafficked children are exposed to inhumane treatment, which takes heavy toll on them physically and psychologically.
- The most important cause and consequence of Child trafficking is AIDS – On one side, fear of AIDS, leads to preference for young sex workers(as they are perceived to be HIV negative), there by promoting Child trafficking. At the same time Child sex workers are prone for HIV and AIDS as they do not have the power to negotiate for the use of condoms and can also be subjected to sexual practices mostly associated with HIV transmission.

Other laws

- There are at least 12 other laws which have provisions to deal with different kinds of trafficking.
- These include Immoral Trafficking of Persons Act, IPC Section 176(a) and 363 374, CRPC, Juvenile Justice Act, Child Labour Act, Bonded Labour Abolition Act, Prohibition of Child Marriage Act, Prevention of Child Sexual Offences, IT Act, Transplantation of Human Organs Act, Inter-state Migrant's Workmen Act, among others.

Criticism

- The draft bill fails to clear what it means by trafficking, and whether it includes trafficking for forced labour; what is its strategy behind prevention and protection; and what amount of money or provision of services and facilities encompass rehabilitation for a survivor.
- Importantly, the Bill seeks to create an anti-trafficking fund, but does not give the details about what would be the amount, where would the money come from, and how it would be utilised.

- The Bill is also weak on prevention and rehabilitation.
- It focuses only on an institution-based rehabilitation approach with no recognition of psychological and physiological rehabilitation.
- The care homes have no provision for health departments and what happens to a person after she comes out of institutional care is not taken care of.
- Most of the existing separate laws dealing with the known destination crimes of human trafficking (e.g., sex trade, sweatshops, beggary rackets, human organ trade, exploitation of children in the labour sector, bonded labour) are, by and large, adequate.

Measures to curb Child trafficking

- The issue also has to be addressed at the source. It is extreme poverty and deprivation that make people vulnerable to predatory traffickers.
- There has to be much greater co-ordination among the states on this and a mechanism to reimburse the victims.
- Collusion with Police has to curbed, to control illegal placement agencies who lure children with promise of employment opportunity
- The tribal areas, which are the most preferred catchment areas for traffickers must be given special focus by the authorities.
- In many cases, especially those who have been rescued from commercial sex work, the families do not accept them back. They must be rehabilitated and provided the skills to become gainfully employed.
- Bonded labour, which is also the result of a form of trafficking, should be dealt sternly.

23. The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016

Purpose of the bill:

- It seeks to amend four laws: (i) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), (ii) Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI), (iii) Indian Stamp Act, 1899 and (iv) Depositories Act, 1996.

Amendments to the SARFAESI Act:

- The SARFAESI Act allows secured creditors to take possession over a collateral, against which a loan had been provided, upon a default in repayment. This process is undertaken with the assistance of the District Magistrate, and does not require the intervention of courts or tribunals. **The Bill provides that this process will have to be completed within 30 days by the District Magistrate.**

- **The Bill empowers the District Magistrate to assist banks in taking over the management of a company, in case the company is unable to repay loans.** This will be done in case the banks convert their outstanding debt into equity shares, and consequently hold a stake of 51% or more in the company.
- The Act creates a central registry to maintain records of transactions related to secured assets. The Bill creates a central database to integrate records of property registered under various registration systems with this central registry. This includes integration of registrations made under Companies Act, 2013, Registration Act, 1908 and Motor Vehicles Act, 1988.
- **The Bill provides that secured creditors will not be able to take possession over the collateral unless it is registered with the central registry.** Further, these creditors, after registration of security interest, will have priority over others in repayment of dues.
- The Act empowered the Reserve Bank of India (RBI) to examine the statements and any information of Asset Reconstruction Companies related to their business**. The Bill further empowers the RBI to carry out audit and inspection of these companies**. The RBI may penalise a company if the company fails to comply with any directions issued by it.
- The Bill provides that stamp duty will not be charged on transactions undertaken for transfer of financial assets in favour of asset reconstruction companies. Financial assets include loans and collaterals.

Amendments to the RDDBFI Act:

- The RDDBFI Act established Debt Recovery Tribunals and Debt Recovery Appellate Tribunals. The Bill increases the retirement age of Presiding Officers of Debt Recovery Tribunals from 62 years to 65 years. Further, it increases the retirement age of Chairpersons of Appellate Tribunals from 65 years to 67 years. It also makes Presiding Officers and Chairpersons eligible for reappointment to their positions.
- The Act provides that banks and financial institutions will be required to file cases in tribunals having jurisdiction over the defendant's area of residence or business. **The Bill allows banks to file cases in tribunals having jurisdiction over the area of bank branch where the debt is pending.**
- **The Bill provides that certain procedures under the Act will be undertaken in electronic form.**These include presentation of claims by parties and summons issued by tribunals under the Act.

- The Bill provides further details of procedures that the tribunals will follow in case of debt recovery proceedings. This includes the requirement of applicants to specify the assets of the borrower, which have been collateralised. The Bill also prescribes time limits for the completion of some of these procedures.

Issues:

- The Bill amends SARAFESI act and provides that the taking over of collateral will have to be completed within 30 days by the District Magistrate**. But the bill is silent on extension of this limit, if there a genuine delay.**
- This exemption from stamp duty will not be applicable, if the asset has been transferred for purposes other than securitisation or reconstruction (such as for the ARC's own use).
- The Bill amends RDDBFI Act and provides that certain procedures under the Act will be undertaken in electronic form. These include presentation of claims by parties and summons issued by tribunals. **Creation of electronic infrastructure is mandatory for implementing these provisions**.

24. Industrial Relations Bill, 2015

What is the need of the bill?

- The Union labour ministry has drafted the new legislation to merge three central labour laws into one.
- The initiative assumes significance in the backdrop of the government's bid to consolidate and reduce the number of central laws.
- It is done to encourage compliance and improve the ease of doing business. Fewer laws mean better monitoring, easycompliance and benefit to both industries and workers

What are the provisions of the bill?

- The Labour Code on Industrial Relations Bill, 2015, proposes to combine Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act, 1946.
- The bill, in its present form, has 107 sections in 13 chapters to deal with all industrial relations issues.
- The bill shall consolidate and amend the law relating to registration of trade unions, conditions of employment, investigation and settlement of disputes and the matters related therewith or incidental thereto.
- It shall extend to the whole of India.
- No worker employed in an industrial establishment shall go on strike in breach of contract -

- without giving to the employer notice of strike, within six weeks before striking
- within fourteen days of giving such notice
- before the expiry of the date of strike specified in any such notice as aforesaid; or
- during the pendency of any conciliation proceedings before a conciliation officer
- during the pendency of proceedings before a Industrial Tribunal or National Tribunal
- during the pendency of arbitration proceedings before an arbitrator
- No employer or worker or a trade union shall commit any unfair labour practice like threatening workers with discharge or dismissal, if they join a trade union or workers instigating any illegal strike.
- It will cover three key aspects—the right to association, right to collective bargaining and right to collective service condition. All central labour unions believe these three issues—the essence of the three bills—shall not be tampered with.
- All workers employed in industries for more than a year will get three months of notice in case there is a plan for retrenchment. But it shall not apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.