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MAINSTORMING 2020

SOCIAL ISSUES I

Shankar IAS Academy™

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SOCIAL ISSUES I

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MAINSTORMING 2020

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(JANUARY 2020 - AUGUST 2020)

1. GENDER ISSUES

1.1 Cruelty as Ground for Divorce

Why in news?

In India, the courts are seeing mental cruelty as grounds for divorce.

What is the Bombay HC judgment?

- The Bombay High Court observed cruelty as a ground while granting a divorce.
- In this case, it held that a wife writing to the employer of her spouse with unfounded allegations about him constitute actionable cruelty under the Hindu Marriage Act, 1955.
- It observed that there was both physical and mental cruelty.
- It said that if allegations are made in writing and if they are baseless, it may cause mental pain to other spouse.
- It will be considered as an instance of cruelty.

What are the grounds for divorce under Hindu law?

- The Hindu Marriage Act, 1955, lays down the law for divorce that applies to Hindus, Buddhists, Jains, and Sikhs.
- Under Section 13 of the Act, the grounds for divorce include:
    1. Voluntary sexual intercourse with any person other than spouse;
    2. Cruelty (both mental and physical);
    3. Desertion for a continuous period of not less than 2 years immediately preceding the presentation of the petition;
    4. Ceasing to be a Hindu by conversion to another religion; and
    5. Being incurably of unsound mind.
- In addition, Section 13B provides for divorce by mutual consent.
- Section 27 of The Special Marriage Act, 1954 provides the grounds for grant of divorce in the case of marriages solemnised under that Act.

When was mental cruelty added as ground for divorce?

- When it was first passed, the Hindu Marriage Act did not have 'cruelty' as a ground for divorce.
- It was after an amendment in 1976 that this basis became available for seeking both divorce and judicial separation.
- While Parliament did insert the term 'cruelty' in the Act, it did not supply an exhaustive definition.
- As a result, the term has been understood according to its interpretation by the judiciary over the years.
- The courts have evolved grounds for providing relief in cases of both physical and mental cruelty.

What are the cases?

- **Dastane v Dastane Case (1975)** - The Supreme Court had examined the concept of legal cruelty while granted divorce to the husband.
- The SC held that the wife threatening to end her life, and verbally abusing the husband, among other acts, amounted to mental cruelty.
- It observed that the inquiry has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable worry that it will be harmful to live with the respondent.
- **Shobha Rani v Madhukar Reddi (1988)** - The SC held that repeated demands for dowry by the husband or his relatives was a form of cruelty.
- The courts have also given similar relief in other cases, including those of persistent drunkenness and repeatedly making unfounded allegations.

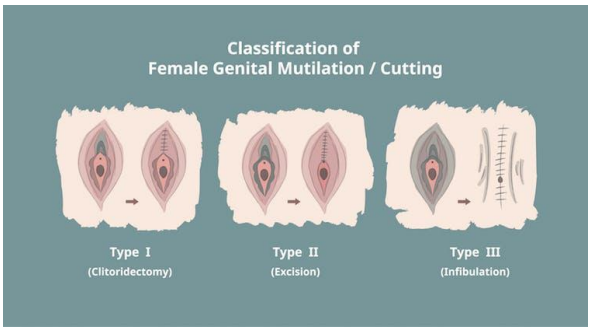
1.2 Criminalising Female Genital Mutilation - Sudan

Why in news?

The transitional government in Sudan approved a landmark draft law to criminalise the widespread practice of female genital mutilation (FGM).

What is the FGM practice all about?

- Female genital mutilation is a deeply-rooted practice in Sudan and other countries in Africa, Asia and the Middle East.
- FGM involves the partial or total removal of external female genitalia or other injury to the female genital organs for non-medical reasons.
- It is traditionally seen as a way of curbing female sexual desire in order to reinforce conservative behaviour.
- It is regarded as crucial prior to matrimony.



How prevalent is the practice?

- According to the UN, over 200 million women in several African countries have been subject to this brutal social custom.
- These include Sudan, Egypt, Nigeria, Djibouti and Senegal, and some countries in Asia.
- A 2014 U.N. children's agency report estimated that 87% of Sudanese women and girls of 15-49 age group have been subjected to the procedure.
- Most undergo an extreme form known as infibulation, which involves the removal and repositioning of the labia to narrow the vaginal opening.
- The practice is not only a violation of every girl child's rights, but is also harmful and has serious consequences for physical and mental health.
- There is ongoing research to rectify the damage.
- But WHO is somewhat unconvinced with the effectiveness of recent reconstruction surgeries.

What are the changes brought in?

- The government's proposal is part of a set of sweeping amendments to the criminal code.
- They seek to scrap the repressive social codes and humiliating penalties that targeted women during the nearly 30-year dictatorship of Omar al-Bashir.

- Hundreds of Sudanese professionals had demanded a broad-based and inclusive constitutional order.
- Under the proposed amendments, anyone found guilty of performing the FGM procedure would be sentenced up to 3 years in prison.
- It would also abolish the death penalty for people under the age of 18.
- The amendment would also prevent pregnant women from being imprisoned for minor crimes.
- The law must still be ratified by a joint meeting of the Cabinet and the sovereign council.
- The council assumed power after the overthrow of long-time President Omar al-Bashir in 2019.
- The proposed law has been brought forward by the country's interim government, which includes four female ministers.

What are the challenges?

- Rights groups have warned that the practice remained deeply entrenched in the conservative society.
- This suggests that legislation alone may not stop the practice that has deep cultural roots.
- Notably, female genital mutilation has survived in other countries that have criminalised the practice too.
- Moreover, Sudan is still in a transition from dictatorship to democracy.
- It is unclear whether the country's military leaders, who make up a majority of the sovereign council, will approve the law.
- The changes if approved could spark a backlash by powerful Islamist groups that backed al-Bashir.
- So, working in coordination with the communities and raising awareness is essential to enforce this law.
- Also, sustaining the country's progressive elements and democratic transition would be crucial to consolidate the gender reforms it has introduced in recent months.

1.3 Faridkot Ruler Property Dispute

Why in news?

The Punjab and Haryana High Court's judgment upheld the property rights of the women in the family of the last Maharaja of Faridkot.

Who was the last Maharaja of Faridkot?

- Maharaja Harinder Singh Brar was the last ruler of Faridkot, who was born in 1915 and died in October 1989.
- His only son Harmohinder Singh, and his wife Rani Narinder Kaur had died earlier.
- At the time of his death, he was survived by his mother Mohinder Kaur, three daughters (Amrit Kaur, Deepinder Kaur and Mahipinder Kaur) and a brother, Kanwar Manjit Inder Singh.
- Of the three daughters, only the eldest Amrit Kaur (87) survives.
- The court ruling upholds her property rights and the rights of the heirs of the other women in the family, too.

What happened to the property?

- The Faridkot state surrendered sovereignty and joined the Patiala and East Punjab States Union in 1948.
- So, the Maharaja was allowed to retain certain personal properties, spread over Faridkot, Chandigarh, Shimla and Delhi.
- When he died, his daughters had no inheritance rights, as was the norm under the feudal system.
- On the basis of a purported will dated June 1, 1982, MaharwalKhewaji Trust took over the property, estimated to be worth Rs 25,000 crore.

- Another London-based Trust - Grindlays Bank is its sole trustee - created by Brar was meant to provide for the three daughters.
- Deepinder Kaur and Mahipinder Kaur, held offices in this Trust as chairperson and vice-chairperson, in accordance with the 1982 will.
- Amrit Kaur was not part of the Trust.
- She was disinherited, allegedly for the reason that she had married against her father's wishes at the age of 18 in 1952.

What is the dispute about?

- In 1992, Amrit Kaur challenged the 1982 will in a Chandigarh court.
- She sought one-third share in her father's property - with consequential benefit to her sisters - under the Hindu Succession Act, 1956.
- Later, she claimed the whole property citing certain clauses in the Raja of Faridkot's Estate Act, 1948.
- Kanwar Manjit Inder Singh, Brar's brother, also filed a suit that claimed the property, citing the Rule of Primogeniture.
- Deepinder Kaur and Mahipinder Kaur also questioned Amrit Kaur's claim and the will legally.
- In 2013, the Chandigarh court divided the property among the then two surviving daughters and declared the 1982 will as invalid.
- The matter then went to the lower appellate court.
- It upheld the decision in 2018, after which the case reached Punjab and Haryana High Court.

How did the High Court rule on the property?

- The High Court not upheld the rights of the daughters and gave Brar's mother, who was alive when her son died, her share in the property.
- **Acts** - Amrit Kaur had laid claim to the whole property on the basis of Section 4(3) of the 1948 Act.
- This Act states that in absence of the male descendant or his legitimate descendants, the property would go to the nearest agnate (descendant from a male ancestor).
- The HC held that the 1948 Act was not an existing enactment at the time the Constitution came in force, and the matter would not be covered under The Hindu Succession Act, 1956 will not apply to any estate.
- This Act won't apply as the descends to a single heir by the terms of any agreement entered into by the Ruler of any Indian State with the Indian government or by terms of any law passed before its commencement.
- **Primogeniture Rule** - Kanwar Manjit Singh's argument regarding the applicability of the Rule of Primogeniture was also rejected by the HC.
- Under the rule, the eldest male child gets the inheritance on the death of the father.
- Since Brar had no surviving son, Manjit Singh argued the property must be given to him as he is the sole surviving male descendant from the line of his and Brar's father.
- The HC held that the rule ceased to exist on account of merger of Faridkot state with India.

How did the court rule on the will?

- Amrit Kaur's argument was that her father was depressed on account of his son's death in 1981 and others influenced him.
- She said that this has resulted in a fraud and misrepresentation in the form of the will.
- Forensic expert Dr Jassi Anand, who examined the will on her behalf, proved that the will had crude symptoms of forgery.

- The HC agreed with the lower court finding and held Anand has proved the forgery.

What are the other key aspects of the verdict?

- The HC verdict validated a will made by Brar's mother, who in 1992 had bequeathed certain property to her other son Kanwar Manjit Singh's kin.
- The HC said she was alive at the time of death of her son and was his class-I heir.
- This makes her entitled to a share in her son's property in accordance with the Hindu Succession Act.
- The question of her share hadn't been directly raised in the case before.
- The will stated that her personal property would go to her granddaughter Devinder Kaur and grandson Bharat Inder Singh.
- Her will also states other than the mentioned property and estates, any other property or estate coming her way would be equally divided among Kanwar Manjit Singh, his son and daughter.
- The HC said her inheritance cannot remain in abeyance and her lawful share is subject matter of her 1990 will.

1.4 Karnataka HC's Remarks - Rape Myths and Stereotypes

What is the issue?

- A single bench of the Karnataka High Court recently granted anticipatory bail to a man accused of rape.
- The reasons given and the remarks made by the court highlight the grave shortfalls and insensitivities in the justice system.

What were the judge's remarks?

- Justice Krishna S. Dixit of the Karnataka high court made the following remarks:
    - nothing is mentioned by the complainant as to why she went to her office at night that is, 11.00 pm
    - she has also not objected to consuming drinks with the petitioner and allowing him to stay with her till morning
    - the explanation offered by the complainant that after the perpetration of the act she was tired and fell asleep , is unbecoming of an Indian woman
    - that is not the way our women react when they are ravished
- He then went on to grant anticipatory bail to the accused.
- One of the reasons - the seriousness of the offence alone cannot be a ground for depriving a citizen (accused) of her/his liberty.

What are the contentions?

- The Judge's observation on the seriousness of the offence is true.
- But, the Court ought to have considered that, in cases of rape, the issue in granting bail is not just seriousness of the offence.
- It is rather the very real possibility of intimidation of the complainant.
- This would prevent her from being an effective witness in the trial.
- Also, the Court based its reasoning in unsubstantiated, damaging inferences drawn from the behaviour of the complainant.
- The contentious remarks were subsequently removed on an application made by the state.
- However, the continued and frequent use of these rape myths and stereotypes deserves discussion.

What are the prevailing rape myths and stereotypes?

- Rape myths or stereotypes are widely held, false and prejudicial notions about rape, rapists, and the survivors of rape.
- The underlying assumption here is that 'genuine' victims/survivors of rape can be recognised by some common patterns of behaviour they exhibit.
- To begin with, they are expected not to put themselves in situations which, it is believed, might lead to rape.
- These are the situations that include anything that is seen as a social taboo for women.
- These may include drinking, partying, or indeed, as stated by the defence in the infamous Nirbhaya case, simply being out at night.
- The implication here is that willingness to participate in such activities is equivalent to consent to sex.
- Otherwise, engaging in social taboo is tantamount to inviting rape.
- Another common stereotype is that 'genuine' victims/survivors physically resist their assailants or shout for help.
- In Mahmood Farooqui v. NCT of Delhi (2017), the Delhi HC had held that the complainant's 'feeble no', even when spoken, would not be sufficient evidence of lack of consent.
- The above case also repeated the widely held belief of Courts that where the victim/survivor had a past sexual history with the accused, her consent would be assumed.
- And so, any 'unwillingness' or 'hesitation' on her part would be disregarded.

What is the grave concern with these notions?

- These prevailing rape myths and stereotypes shift the burden onto the victim.
- The greatest evil thus is that they put the victim, rather than the accused and society, on trial.
- The focus shifts from whether the accused committed the offence or not to whether the victim/survivor's behaviour met standards demanded by patriarchy.
- The focus is on the narrative that the victim/survivor could have avoided the rape, or indeed, asked for it.
- The blame is thus conveniently shifted from large-scale social and systemic failures to the victim/survivor herself.

What does the law specify?

- The rape law for adults in India was amended in 2013.
- The Criminal Law (Amendment) Act in 2013 widened the definition of rape and made punishment more stringent.
- It specifically states that failure to resist cannot be taken as evidence of consent.
- In fact, consent, whether verbal or non-verbal, has been defined to mean 'unequivocal voluntary agreement'.
- The following cannot and should not be equated with consent to sex -
    i. passive submission (which may arise out of fear or deep-rooted social conditioning)
    ii. acquiescence to non-sexual acts such as drinking together
- The Amendment also laid down that consent would mean willingness to participate in a 'specific' sexual act.
- Therefore, consent given for a particular sexual liaison cannot be read as ongoing consent, given in perpetuity.

What does this suggest of the justice system?

- The reliance on rape myths and stereotypes is painfully common in the Indian criminal justice system.

- Rape myths and stereotypes reflect the deeply entrenched patriarchal biases of those in India's criminal justice system and the society at large.
- Those tasked with implementing the legislation continue to put the victim/survivor on trial.
- This defeats the very purpose of making the legislation progressive or 'victim-centric'.
- When used in judgments, they become a permanent part of the legal record.
- As precedent, they create a chilling effect for all future victims/survivors of rape.
- This makes the criminal justice system even more unapproachable than it is.

1.5 Consent in Rape - Farooqui Verdict

What is the issue?

- Delhi High Court acquitted a person accused of rape charges in 2017.
- There are divergent views in this regard, between sexual consent of a woman and rape.

What is the case?

- Mahmood Farooqui was convicted of rape charges by a trial court.
- The case involves a 35-year-old foreign woman researcher in India.
- The Delhi High Court acquitted the accused giving him the benefit of doubt.
- The two grounds are i) he had no intention to rape her ii) it was unclear that she had refused consent.
- The court has held that the women's stance on consent should not be mere hesitation or reluctance, but a clear and unambiguous "no".

What is the 2013 amendment?

- After the Nirbhaya rape case, in 2013, significant amendments were made to the rape law provisions in the Indian Penal Code.
- Among many, it included the definition of consent in rape cases and established an "affirmative model" of consent.
- Accordingly, consent is defined as an indisputable voluntary agreement by words, gestures or any form of verbal or non-verbal communication by a woman.
- It clearly specifies that absence of physical resistance would not by itself amount to consent.
- Clearly, the objective behind the incorporation of this definition is to make **woman the subject of law**.
- The amendments also introduced a clause which says that if the woman "is unable to communicate consent", the man would be said to have committed rape.
- It could be due to physical or mental infirmity, or not being given the space to communicate and be heard.

Why is the recent judgement flawed?

- The verdict seems to have completely negated the objective and intent of the definition of sexual consent in the 2013 amendment.
- The judgement has derived validity primarily from two **presumptions** -
    i. absence of intention to rape (by the accused).
    ii. non-communication by the woman despite a clear 'no' from her.
- Clearly, as a disregard for the amendments, the verdict displaces the woman and reinstitutes the **man as the subject of law**.

- The court's reasoning was not what the woman said, but what the man understood as her consent.
- The ground of **"assumed consent"** in the verdict seems to ignore woman's voice or freedom in matters concerning her sexuality.

What is the larger implication?

- The Delhi High Court's verdict comes as a jolt to the evolving rape law jurisprudence in the country.
- The still prevalent socio-cultural stereotypes have defied the women sensitive logic and objective of earlier legal reforms.
- The country and the judiciary should wake up to women's concerns and rights, to establish gender equality in all spheres of freedom and justice.

1.6 Permanent Commission to Women Officers in Army

Why in news?

The Ministry of Defence (MoD) has issued the formal Government Sanction Letter for grant of Permanent Commission (PC) to women officers in the Army.

What is a Permanent Commission?

- A Permanent Commission (PC) means a career in the army until one retires.
- If one gets selected through PC, one has the option to serve the country up to the full age of retirement.

What is the government's order?

- The government's order specifies the grant of PC to Short Service Commissioned (SSC) women officers in all the 10 streams of the Army in which they presently serve.
- The same procedure for male SSC officers will be followed for women to give PC.
- The order follows a Supreme Court verdict in February 2020.

What was the Supreme Court verdict?

- About 322 women officers had approached the apex court on the issue of PC.
- The court directed the government to ensure that women officers, irrespective of their years of service, are granted PC in the army.
- The issue of command postings came up in the discussion on subsequent avenues after the grant of PC.
- In its appeal, the government cited "physical" and "physiological limitations" in granting command positions to women offers.
- To this, the Supreme Court said there was need for administrative will and "change of mindset" in this regard.
- The court thus added that the woman officers would be eligible for command posting.
- The SC bench observed that there could not be absolute exclusion of women officers for command assignments, and that they should be considered on a case-by-case basis.

Why is this significant?

- The Army is often seen as the preserve of men.
- But enough women have fought heroic battles to bust that myth.
- From Rani of Jhansi in the past to Squadron Leader Minty Agarwal of the Indian Air Force, there are many to cite.
- [Minty Agarwal, in 2019, was part of the team that guided Wing Commander AbhinandanVarthaman during the Balakot airstrike carried out by the IAF.]

- But the battle to break a gender stereotype and provide equal opportunities for women in the Army had to be fought right up to the Supreme Court.
- The government initially did not take serious a Delhi High Court ruling in the litigants' favour 10 years ago.
- Then in the Supreme Court, the litigants concerns were evident with the views expressed by the government.
- The government pointed at "physiological limitations" of women officers.
- These were cited as great challenges for women officers to meet the exigencies of service.
- But this misogyny was called out by the Supreme Court, which directed for equal treatment.
- Given this past, the present decision will go a long way in ending a prejudice associated with the Army.

1.7 Hindu Woman's Inheritance Right

Why in news?

The Supreme Court expanded on a Hindu woman's right to be a joint legal heir and inherit ancestral property on terms equal to male heirs.

What is the ruling?

- A three-judge Bench has ruled that a Hindu woman's right to be a joint heir to the ancestral property is by birth.
- It says that the rights do not depend on whether her father was alive or not when the law was enacted in 2005.
- The Hindu Succession (Amendment) Act, 2005 gave Hindu women the right to be coparceners or joint legal heirs like a male heir does.
- The ruling said that since the coparcenary is by birth, it is not necessary that the father coparcener should be living as on 9.9.2005.

What is the Hindu Succession Act, 1956?

- The Mitakshara school of Hindu law was codified as the Hindu Succession Act, 1956.
- It governed succession and inheritance of property but only recognised males as legal heirs.
- The law applied to everyone who is not a Muslim, Christian, Parsi or Jew by religion.
- Buddhists, Sikhs, Jains and followers of Arya Samaj, Brahmo Samaj are also considered Hindus for the purposes of this law.
- In a Hindu Undivided Family (HUF), several legal heirs through generations can exist jointly.
- Traditionally, HUF includes only the male descendants of a common ancestor along with their mothers, wives and unmarried daughters.
- The legal heirs hold the family property jointly.

What is the 2005 law?

- Women were recognised as coparceners or joint legal heirs for partition arising from 2005.
- Section 6 of the Act was amended that year to make a daughter of a coparcener also a coparcener by birth in her own right.
- The law also gave the daughter the same rights and liabilities in the coparcenary property as she would have had if she had been a son.
- It applies to ancestral property and to intestate succession in personal property - where succession happens as per law and not through a will.
- The 174th Law Commission Report had also recommended this reform in Hindu succession law.

- Even before the 2005 amendment, Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu had made this change in the law.

How did the case come about?

- While the 2005 law granted equal rights to women, questions were raised in multiple cases on whether the law applied retrospectively.
- There were questions regarding whether the rights of women depended on the living status of the father through whom they would inherit.
- Different benches of the SC had taken conflicting views on the issue.
- In Prakash v Phulwati (2015), the SC held that the benefit of the 2005 amendment could be granted only to living daughters of living coparceners as on September 9, 2005.
- [September 9, 2005 - The date when the amendment came into force.]
- In 2018, the SC held that the share of a father who died in 2001 will also pass to his daughters as coparceners during the partition of the property as per the 2005 law.
- These conflicting views by Benches of equal strength led to a reference to a three-judge Bench in the current case.
- The ruling now overrules the verdicts from 2015 and 2018.

How did the court decide the case?

- The court looked into the rights under the Mitakshara coparcenary.
- Section 6 creates an unobstructed heritage or a right created by birth for the daughter of the coparcener.
- So, the right cannot be limited by whether the coparcener is alive or dead when the right is operationalised.
- The court said that the 2005 amendment gave recognition of a right that was in fact accrued by the daughter at birth.
- The conferral of a right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son.
- She is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth.
- The ruling said that though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application.
- They confer benefits based on the antecedent event.
- The Mitakshara coparcenary shall be deemed to include a reference to a daughter as a coparcener.
- The SC also directed High Courts to dispose of cases involving this issue within six months since they would have been pending for years.

What was the government's stand?

- Solicitor General Tushar Mehta argued in favour of an expansive reading of the law to allow equal rights for women.
- He referred to the objects and reasons of the 2005 amendment.
- He said that the Mitakshara law contributed to gender discrimination and was oppressive.
- He also said that the law negated the fundamental right of equality guaranteed by the Constitution of India.

1.8 Minimum Age of Marriage

Why in news?

The central government has set up a committee to reconsider the minimum age of marriage for women.

What is the difference?

- The minimum age of marriage is distinct from the age of majority which is gender-neutral.
- As per the Indian Majority Act, 1875, an individual attains the age of majority at 18.
- Currently, the minimum age of marriage is 21 years and 18 years for men and women respectively.

What is the committee?

- The task force was set up by the Ministry for Women and Child Development.
- It will examine the possibility of increasing the age of marriage for women from the present 18 years to 21 years.
- It will examine the correlation of age of marriage and motherhood with certain factors.
- These factors include health, medical well-being, and nutritional status of the mother and child, during pregnancy, birth and thereafter.
- It will also look at parameters like Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR), Total Fertility Rate (TFR), Sex Ratio at Birth (SRB) and Child Sex Ratio (CSR).

Why is there a minimum age for marriage?

- The law prescribes a minimum age of marriage to essentially prohibit child marriages and prevent the abuse of minors.
- Personal laws of various religions that deal with marriage have their own standards, often reflecting custom.
- **Hindus** - The Hindu Marriage Act, 1955, sets 18 years and 21 years as the minimum age for the bride and groom respectively.
- However, child marriages are not illegal - though they can be declared void at the request of the minor in the marriage.
- **Islam** - The marriage of a minor who has attained puberty is valid.
- The Special Marriage Act, 1954 and the Prohibition of Child Marriage Act, 2006 prescribe 18 and 21 years as the minimum age of consent for marriage for women and men respectively.
- Additionally, sexual intercourse with a minor is rape and the 'consent' of a minor is regarded as invalid.

How did the law evolve?

- The Indian Penal Code enacted in 1860 criminalised sexual intercourse with a girl below the age of 10.
- The provision of rape was amended in 1927 through The Age of Consent Bill, 1927.
- It declared that marriage with a girl under 12 would be invalid.
- In 1929, The Child Marriage Restraint Act set 16 and 18 years as the minimum age of marriage for girls and boys respectively.
- The law, popularly known as the Sarda Act, was amended in 1978 to prescribe 18 and 21 years as the age of marriage for a woman and a man.

Why is the legal age of marriage different for men and women?

- There is **no reasoning in the law** for having different legal standards of age for men and women to marry.
- The laws are a codification of **custom and religious practices**.

- The Law Commission argued that having different legal standards contributes to the stereotype that wife must be younger than husband.
- The Committee on the Elimination of Discrimination against Women, calls for the abolition of laws that assume women have a different physical or intellectual rate of growth than men.
- It recommended that the minimum age of marriage for both genders must be set at 18.
- It noted that the difference in age for husband and wife has no basis in law as spouses entering into a marriage are by all means equals.

Why is the law being relooked at?

- There are many arguments in favour of increasing the minimum age of marriage of women.
- There is a need to bring in gender-neutrality.
- There is a need to reduce the risks of early pregnancy among women.
- Early pregnancy is associated with increased child mortality rates and affects the health of the mother.
- Despite laws mandating minimum age and criminalising sexual intercourse with minor, child marriages are very prevalent in India.

What are the grounds on which the law was challenged?

- In 2019, the Delhi High Court sought the central government's response in a plea that sought a uniform age for marriage for men and women.
- The petitioner had challenged the law on the grounds of discrimination.
- He argued that Articles 14 and 21 of the Constitution were violated by having different legal ages for men and women to marry.
- [Articles 14 and 21 guarantee the right to equality and the right to live with dignity.]
- Two significant Supreme Court (SC) rulings can act as precedents to support the petitioner's claim.
- **2014** - In the 'NALSA v Union of India', the SC recognised transgenders as the third gender.
- The justice is delivered with the assumption that humans have equal value and should, therefore, be treated as equal, as well as by equal laws.
- **2019** - In the 'Joseph Shine v Union of India', the SC decriminalised adultery.
- It said that a law that treats women differently based on gender stereotypes is an affront to women's dignity.

How common are child marriages in India?

- **UNPF** - A report by the United Nations Population Fund said that child marriages happen 33,000 times a day, every day, globally.
- An estimated 650 million girls and women alive today were married as children.
- By 2030, another 150 million girls under the age of 18 will be married.
- Advances in India have contributed to a 50% decline in child marriage in South Asia - to 30% in 2018.
- But, the region still accounts for the largest number of child marriages each year.
- **UNICEF** estimates suggest that each year, at least 1.5 million girls under the age of 18 are married in India.
- This makes India home to the largest number of child brides in the world - accounting for a third of the global total.
- Nearly 16% adolescent girls aged 15-19 are currently married.

1.9 Covid-19: Impact on Women

What is the issue?

- Covid-19 pandemic is exposing and exploiting inequalities of all kinds, including gender inequality.
- In the long term, its impact on women's health, rights and freedoms could harm us all.

How the pandemic affects women?

- Women are already suffering the deadly impact of lockdowns.
- These essential restrictions increase the risk of violence towards women trapped with abusive partners.
- Recent weeks have seen a global surge in domestic violence.
- The support services for women at risk also face cuts and closures.
- The threat to women's rights and freedoms posed by COVID-19 goes far beyond physical violence.
- The deep economic downturn accompanying the pandemic is likely to have a female face.

What are the actions taken?

- These negative impacts on women led to the Secretary-General of the United Nations (UN) to appeal for peace in homes around the world.
- Since then, over 143 governments have committed to supporting women and girls at risk of violence during the pandemic.
- Every country can take action by,
    1. Moving services online,
    2. Expanding domestic violence shelters, and
    3. Increasing the support to frontline organisations.
- The **Spotlight Initiative** is working with governments in more than 25 countries on these and similar measures.
- [Spotlight Initiative is a partnership between the UN and the European Union.]

What is the inequalitythat women face?

- Women comprise just one in every 10 political leaders worldwide.
- They are disproportionately represented in poorly paid jobs without benefits, as domestic workers, casual labourers, street vendors, etc.,
- The International Labour Organization estimates that nearly 200 million jobs will be lost in the next 3 months alone.
- As women are losing their paid employment, they face a huge increase in care work due to school closures, overwhelmed health systems, etc.,
- This will **delay their returnto the paid labour force**.
- Many girls have had their **education cut short**.

What could be done?

- Women in pandemic-related **decision-making** will prevent worst-case scenarios like second spike in infections, labour shortages, etc.
- **Basic social protections** should be given to women in insecure jobs.
- Measures to stimulate the economy, like cash transfers, credits, loans and bailouts, must be targeted at women.

- Women's **unpaid domestic work** at home must be **included** in economic metrics and decision-making.
- With women's interests and rights front, getting through this pandemic will be faster.

2. CASTE RELATED ISSUES

2.1 Issue of Caste in America and Elsewhere - An Overview

What is the issue?

- A lawsuit has been filed in California against Cisco Systems for allowing caste discrimination against a Dalit Indian-origin employee. Click here to know more
- In this context, here is an overview of the issue of caste in America and elsewhere, outside the Indian subcontinent.

What were the earlier references to 'caste' in America?

- In 1913, A K Mozumdar, an immigrant from Bengal to Washington, applied to become an American citizen.
- US citizenship at the time was determined by race, and given only to whites.
- Mozumdar argued that as a "high-caste Hindu" of "Aryan descent", he shared racial origins with Caucasians.
- His application was accepted and he became the first South Asian American to become a US citizen.
- In 1923, a similar argument that claimed caste was a way to whiteness was put forward by Bhagat Singh Thind.
- Thind was a Sikh writer who had served in the US Army during World War I.
- In his petition, he argued that he was technically "white", given his "pure Aryan blood".
- He argued that the high-caste Hindoo "regards the aboriginal Indian Mongoloid in the same manner as the American regards the "Negro", speaking from a matrimonial standpoint".
- [Hindoo was a blanket term used then for all Indian immigrants.]
- Thind's arguments were rejected in the US Supreme Court.
- It decided that he was not white, and hence not eligible for citizenship.
- A few months later, Mozumdar became the first Indian to lose his citizenship as a consequence of that judgment.

What happened after 1965?

- The 1965 Immigration and Nationality Act came into place as a result of the civil rights campaign in the US.
- The Act overturned restrictions of race and colour.
- It thus allowed a whole generation of Indian skilled labour (mostly upper-caste) to be a part of the American dream.
- But importantly, soon, many "lower-caste" Indians also followed.
- [This was significantly because they accessed educational opportunities in technical institutions via reservations at home.]
- With this, Dalit discrimination started in the US.
- One such example is of the REC Warangal-educated Sujatha Gidla.
- Gidla's 2017 book 'Ants Among Elephants: An Untouchable Family and the Making of Modern India', was published in the US to great acclaim.

- In New York, she recalls facing discrimination from many Indians.
- Gidla recounts, a Brahmin bank cashier "wouldn't accept money from my hands. She would demand that I place it on the counter."

What was the 2015 California textbook debate?

- In 2015, the California board of education asked scholars to help it come up with a framework for history and social science textbooks.
- It was part of a regular evaluation.
- Following that, there was a bitter contest over several aspects of Indian history.
- This included caste and the critique of caste embedded in religions such as Buddhism and Sikhism as well.
- The suggestions of the South Asian Histories for All Coalition (SAHFAC), a collective of scholars and historians, were met with opposition.
- The Hindu American Foundation and other Hindu groups mainly objected.
- They opposed narratives that portrayed "Hindu civilisation" negatively, and warned they might lead to the bullying of Hindu children.
- However, the SAHFAC objected to -
    i. altering contentious portions of Indian history relating to caste atrocities
    ii. the attempt to erase the word "Dalit" from history textbooks as demanded
    iii. the attempt, allegedly, to portray Muslims as oppressors

How prevalent is caste discrimination in the U.S.?

- While the stories of Dalit families are compelling, there is no data about caste in the U.S, and this is a drawback.
- So, in 2018, Equality Labs (an advocacy group for the "caste-oppressed" in California) carried out a survey to fill this gap.
- It surveyed South Asian-Americans on their experience of caste.
- It showed that 67% of Dalits faced caste discrimination at the workplace, 40% in schools, and 40% at temples.
- [That report was cited in the present lawsuit filed against Cisco Systems.]

Is anti-caste movement possible in the U.S.?

- An anti-caste movement taking root in the US is practically hard.
- Notably, of Indian immigrants, 90% are Brahmins and 1.5% are Dalits.
- Indians in America are a minority, and Dalits among them are a minority.
- Issues of such a tiny community making a big enough impact to be called a movement is less likely.
- However, a Dalit consciousness has been present in the US from the 1970s or 1980s, away from the bright lights of media activism.
- People have resisted in private and in public in their own ways.
- Even hiding one's caste is a way of fighting caste as Yengde (who works with community-based Ambedkarite organisations in the US) says.

What was the Dalits' demand for the 2001 UN Conference against Racism?

- The UN Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban, South Africa, in 2001.

- In the lead-up to the conference, Dalit groups had demanded that the conference also take a stand against the "hidden apartheid" in India.
- Since the 1990s, these groups had had some success in lobbying international organisations on caste.
- The universal language and promise of human rights was used to broaden the framework to see the discrimination.
- Specifically, the definition of racial discrimination as "exclusion based on race, colour and descent" was used to acknowledge caste.
- Notably, in 1999, a report by Human Rights Watch, 'Broken People: Caste Violence against India's Untouchables', focussed international attention on the issue.

What was India's stance at the Conference?

- Omar Abdullah, then India's Minister of State for External Affairs said at the conference, the following:
    a. We are firmly of the view that the issue of caste is not an appropriate subject for discussion at this conference.
    b. We are here to ensure that states do not condone or encourage regressive social attitudes.
    c. We are not here to engage in social engineering within member states.

What are the conflicting views in this regard?

- Indian government's position has consistently been that caste should not be equated with race.
- It opines that caste should not be raised in committees that deal with race.
- Caste is an issue that India has been trying to address through constitutional measures.
- So, it does not deny caste, but believes that the issue of race should not get diluted by confusing it with other discriminations.
- On the other hand, Dalits argue that tackling caste needed much more than framing constitutional provisions and legislation.
- The attempt at the conference was to raise a global consensus, to legitimise anti-caste ideologies.
- The Indian government took a position that it needed no interference from the UN. But Dalits view it not as an interference.
- They assert that the UN was only pushing to collectively uphold the value that all humans, irrespective of caste, are equal, and some measures are to be taken for that.
- Strongly opposing the move by Dalit activists and groups, Indian government insisted that caste and race are two dissimilar and anomalous entities.
- But given the anti-apartheid position and programme of affirmative action, these conflicting views and the events at Durban were an embarrassment for India.
- These are just glimpses of the close to two decades' efforts at various levels to get institutions overseas to recognise the 'peculiar challenge of caste'.
- This system of inequality and oppression that is unique to the Indian subcontinent evidently finds reflections in varied forms elsewhere too.
- It has a long way to go before its presence is acknowledged and protections offered to the oppressed.

2.2 Caste Discrimination - California Lawsuit against Cisco Systems

Why in news?

A lawsuit has been filed in California against Cisco Systems, a tech multinational company, for allowing caste discrimination against a Dalit Indian-origin employee.

What is the case about?

- The California Department of Fair Employment and Housing filed a lawsuit against Cisco Systems.
- It was filed against Cisco and two "upper-caste" Indian managers.
- It accused Cisco Systems of allowing caste discrimination against a Dalit Indian-origin employee at its San Jose headquarters.
- The department's director said that it was unacceptable for workplace conditions and opportunities to be determined by a hereditary social status determined by birth.
- It was also said that the employers must be prepared to prevent, remedy, and deter unlawful conduct against workers because of caste.

What is the American law in this regard?

- The American law does not recognise caste.
- The lawsuit was filed under the federal Civil Rights Law 1964.
- The Law bars discrimination only on the basis of race, colour, religion, sex and national origin.
- However, in choosing to litigate, the California government is attempting to expand the ambit of discrimination to include caste.
- It is the first civil rights case in the US where a governmental entity is suing an American company for failing to protect caste-oppressed employees.

What is the significance?

- For close to two decades now, attempts have been ongoing at various levels.
- There were efforts to get institutions overseas to recognise the peculiar challenge of caste.
- The caste system of inequality and oppression is unique to the Indian subcontinent.
- It is naturally recognised by the Constitution of India.
- But in California, the Cisco case is a potential game-changer.
- The lack of having caste as an explicit category has made the prosecutors to keep the issue of caste within protections of religion, race, and ancestry.
- So the present case is expected to set a precedent.
- It will open the door for more such civil rights litigation.
- Silicon Valley, California has a global footprint.
- So, whatever is legislated there will have an impact on company workplaces in India and elsewhere too.
- The now widespread #BlackLivesMatter movement is spotlighting all kinds of discrimination.
- Amidst this, the case against Cisco becomes extremely significant.

2.3 Sub-categorisation of SCs and STs

Why in news?

The Supreme Court reopened the debate on sub-categorisation of Scheduled Castes and Scheduled Tribes for reservations.

What is the story behind?

- Punjab's law applies a creamy layer for SCs, STs by giving preference to Balmikis and Mazhabi Sikhs.
- This is the case that reopened the debate.
- The Supreme Court ruled in favour of giving preferential treatment to certain SCs over others to ensure equal representation of all SCs.
- The case has been referred to a larger Bench to decide.
- This is because, in 2005, the Court ruled that state governments had no power to create sub-categories of SCs for reservation.
- The larger Bench will reconsider both judgments.

What is sub-categorisation of SCs?

- States have argued that among the SCs, there are some that remain under-represented despite reservation in comparison to other SCs.
- This inequality within the SCs is underlined in many reports.
- This has been addressed by framing special quotas for the under-represented.
- In Andhra Pradesh, Punjab, Tamil Nadu and Bihar, special quotas were introduced for the most vulnerable Dalits.
- In 2000, the Andhra Pradesh legislature passed a law reorganising 57 SCs into sub-groups.
- It split the 15% SC quota in educational institutions and government jobs in proportion to their population.
- However, this law was declared unconstitutional in the 2005 Supreme Court ruling.
- This ruling held that the states did not have the power to tinker with the Presidential list that identifies SCs and STs.

What is the Presidential list?

- As per Article 341 of the Constitution, those castes notified by the President are called SCs and STs.
- This is called the Presidential list of the SCs and STs.
- A caste notified as SC in one state may not be a SC in another state.
- No community has been specified as SC in Arunachal Pradesh and Nagaland, and Andaman & Nicobar Islands and Lakshadweep.

What is the Supreme Court ruling regarding the list?

- In the 2005 E V Chinnaiah case, the Court ruled that only the President has the power to notify the inclusion or exclusion of a caste as a SC.
- It also said that the states cannot tinker with the list.
- Andhra Pradesh had submitted that the law was enacted as states had the power to legislate on the subject of education.
- It also added that the reservation in admission fell within its legislative domain.
- However, the court rejected this argument.
- The Constitution treats all SCs as a single homogeneous group.

What are the grounds for sub-categorisation?

- The basis of special protections for SCs comes from the fact that all these castes suffered **social inequity**.

- Untouchability was practised against all these castes irrespective of economic, education and other such factors.
- However, the Court has engaged with the argument on whether the benefits of reservation have trickled down to the weakest of the weak.
- **2018 ruling** - The concept of "creamy layer" was applied to promote the SCs for the first time.
- [This concept puts an income ceiling on those eligible for reservation.]
- The Supreme Court upheld this application to SCs in 2018.
- The central government has sought a review of the 2018 verdict and the case is currently pending.
- Punjab's law applies a creamy layer for SCs, STs in reverse - by giving preference to Balmikis and Mazhabi Sikhs.
- **2005 ruling** - The court had held that special protection of SCs is based on the premise that all SCs must collectively enjoy the benefits of reservation regardless of interse inequality.
- This is because the protection is not based on educational, economic or other such factors but solely on those who suffered untouchability.
- The court also had held that merely giving preference does not amount to inclusion or exclusion of any caste in the list.
- **State's argument** - The states have argued that the classification is done for a certain reason and does not violate the right to equality.
- The reason they have given is that the categorisation would achieve equitable representation of all SCs in government service.

What are the arguments against sub-categorisation?

- **Untouchability** - The argument is that the test of social and educational backwardness cannot be applied to SCs and STs.
- The special treatment is given to the SCs due to untouchability with which they suffer.
- **Vote-bank** - The petitioner's argument against allowing states to change the proportion of reservation is based on the fact that such decision would be taken to appease vote-banks.
- A President's list was envisaged to protect from such arbitrary change.
- **Jarnail Singh case** - The court held that the objective of reservation is to ensure that all backward classes march hand in hand.
- It added that this objective will not be ensured if only a select few get all the coveted services of the government.
- In the current case, the court relied on this case's ruling to buttress the point that social inequities exist even among SCs.
- However, since that ruling is pending for review, the petitioners argued against relying on it.
- The court ruled that the constitutional goal of social transformation cannot be achieved without taking into account changing social realities.

3. RESERVATION

3.1 SC/ST Quota Benefits to the Disabled

Why in news?

- The Supreme Court has confirmed that persons suffering from disabilities are also socially backward.
- With this, they become entitled to the same benefits of relaxation as Scheduled Caste/Scheduled Tribe candidates in public employment and education.

What is the case about?

- The present decision came on a petition filed by Aryan Raj, a special needs person, against the Government College of Arts, Chandigarh.
- [It is an appeal against a Punjab and Haryana High Court order.]
- The college denied Mr. Raj relaxation in minimum qualifying marks in the Painting and Applied Art course.
- The college insisted that disabled persons too need to meet the general qualifying standard of 40% in the aptitude test.
- Notably, the SC/ST candidates were given a relaxation to 35%.
- Setting aside the college decision, the Supreme Court said that the same 35% shall apply so far as the disabled are concerned in future.
- The apex court allowed Mr. Raj to apply afresh for the current year.
- The Court said that it is 'following' the principle laid down in an earlier Delhi High Court judgment.

What was the 2012 HC Judgement?

- It relates to the Anamol Bhandari (Minor) through his father/Natural Guardian v. Delhi Technological University 2012 case.
- The Delhi Technological University prospectus provided 10% of concession of marks in the minimum eligibility requirements for SC/ST candidates.
- But relaxation of only 5% was permissible for People with Disabilities.
- On a petition against this, the Delhi HC ruled against this differential treatment, terming it discriminatory.
- It held that people suffering from disabilities are also socially backward.
- It observed that reservation for the disabled is called horizontal reservation.
- So this cuts across all vertical categories such as SC, ST, OBC & General.
- Therefore, at the very least, it said, they are entitled to the same benefits as given to the SC/ST candidates.
- A three-judge Bench of the Supreme Court has now upheld this 2012 judgment.
- The public sector employers and colleges / universities will now have to allow the same relaxations to the disabled as to SC / ST candidates.

What is the clarity offered?

- The Supreme Court also cited the following from the High Court judgment.
- Intellectually/mentally challenged persons have certain limitations, which are not there in physically challenged persons.
- The subject experts would thus be well advised to examine the feasibility of creating a course, which caters to the specific needs of such persons.

- They may also examine increasing the number of seats in the discipline of Painting and Applied Art with a view to accommodating such students.

Why is this a welcome move?

- The judgement recognises the difficulties faced by the disabled in accessing education or employment, regardless of their social status.
- Even though drawn from all sections of society, the disabled have always been an under-privileged and under-represented section.
- The larger principle is that without imparting proper education to the disabled, there cannot be any meaningful enforcement of their rights.

Can physical/mental and social disabilities be equated?

- A question arises if 'physical or mental disability' could really be equated with the 'social disability' and experience of untouchability suffered by marginalised sections for centuries.
- For instance, the social background of disabled persons from a traditionally privileged community may give them an advantage.
- This stands in contrast with a similar kind of a person suffering from historical social disability as well.
- However, as per the court's view this may not always be the case.
- Evidently, the Delhi High Court had cited the abysmally low literacy and employment rates among persons with disabilities.
- **Indicators** - The 2001 Census put the illiteracy rate among the disabled at 51%.
- This is much higher than the general population figure.
- The share of disabled children out of school was quite higher than other major social categories.
- There was similar evidence of their inadequate representation in employment too.

3.2 SC judgment on Reservation

Why in news?

A recent Supreme Court judgment states that there is no fundamental right to claim reservation in promotions.

What does the latest judgment remind?

- The received wisdom in affirmative action jurisprudence is that a series of Constitution amendments and judgments have created a sound legal framework for reservation in public employment.
- The latest judgment is a reminder that affirmative action programmes allowed in the Constitution flow from "**enabling provisions**" and are **not rights as such**.
- Major judgments note that **Article 16(4)**, on reservation in posts, is **enabling in nature**. The state is not bound to provide reservations.
- But if it does so, it must be in favour of sections that are backward and inadequately represented in the services based on quantifiable data.

What is the Uttarakhand High Court order?

- The **Supreme Court set aside an Uttarakhand HC order** directing data collection on the adequacy of representation of SC/ST candidates in the State's services.
- Based on the above "enabling nature", the Court is not wrong in setting aside this order.
- Its reasoning is that once there is a decision not to extend reservation to the section, the question whether its representation in the services is inadequate is irrelevant.

- The root of the current issue lies in the then government's decision to give up SC/ST quotas in promotions in Uttarakhand.
- The present political regime also shares responsibility as it argued in the Court that there is **neither a basic right** to reservations **nor a duty** by the State government to provide it.

3.3 EWS Quota Law

Why in news?

The Supreme Court has referred to a five-judge Constitution Bench a batch of petitions challenging the Economically Backward Section (EWS) quota law.

What is the law?

- The 103rd Constitution Amendment of 2019 provides for 10% reservation in government jobs and educational institutions for EWS.
- This reservation is provided by amending Articles 15 and 16 of the Constitution that deal with the fundamental right to equality.
- [Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth.
- Article 16 guarantees equal opportunity in matters of public employment.]
- The amendment adds an additional clause to both the provisions.
- This clause gives Parliament the power to make special laws for EWS like it does for Scheduled Castes, Scheduled Tribes and OBCs.
- The states are to notify who constitute EWS to be eligible for reservation.

What does the reference mean?

- A reference to a larger Bench means that the legal challenge is an important one.
- **Article 145(3)** - The minimum number of Judges who are to sit for deciding any case involving a question of law as to the interpretation of this Constitution shall be five.
- **The SC rules of 2013** - A bench of two judges will generally hear writ petitions that allege a violation of fundamental rights, unless it raises substantial questions of law.
- In that case, a five-judge bench would hear the case.
- Laws made by Parliament are presumed to be constitutional until proven otherwise in court.
- The SC had refused to stay the 103rd Amendment.
- A reference will make no difference to the operation of the EWS quota.

What are the grounds of challenge?

- The law was challenged on the ground that it **violates the Basic Structure** of the Constitution, which says that.
- The special protections guaranteed to socially disadvantaged groups are part of the Basic Structure.
- The argument is that the amendment departs from this Basic Structure by promising special protections on the sole basis of economic status.
- Although there is no exhaustive list of what forms the Basic Structure, any law that violates it is understood to be unconstitutional.
- The petitioners have also challenged the amendment because it **violates the SC's 1992 ruling** in Indra Sawhney case.
- This ruling upheld the Mandal Report and capped reservations at 50%.

- In the ruling, the court held that economic backwardness cannot be the sole criterion for identifying backward class.
- Another challenge has been made on behalf of private, unaided **educational institutions**.
- They have argued that their fundamental right to practise a trade/profession is violated when the state compels them to implement its reservation policy.

What are the government's arguments?

- The Ministry of Social Justice and Empowerment filed counter-affidavits to defend the amendment.
- When a law is challenged, the burden of proving it unconstitutional lies on the petitioners.
- The government argued that under **Article 46** of the Constitution, it has a duty to protect the interests of EWSs.
- [Article 46 - It is a part of Directive Principles of State Policy.
- It states that the State shall promote with special care the educational and economic interests of the weaker sections of the people.
- It also says that special care should be given, in particular, to the Scheduled Castes and the Scheduled Tribes.]
- **Countering Basic Structure argument** - The government argued that to sustain a challenge against a constitutional amendment, it must be shown that the very identity of the Constitution has been altered.
- **Countering Indra Sawhney argument** - For this, the government relied on a 2008 ruling in Ashok Kumar Thakur v Union of India case.
- In this 2008 ruling, the SC upheld the 27% quota for OBCs.
- The argument is that the court accepted that the definition of OBCs was not made on the sole criterion of caste but a mix of caste and economic factors.
- It made this argument to prove that there need not be a sole criterion for according reservation.
- For the **unaided institutions**, it argued that the Constitution allows the Parliament to place reasonable restrictions on the right to carry on trade.

What are the terms of reference framed by the court?

- The SC agreed that the case involved at least three substantial questions of law, whether:
    1. The economic criteria alone cannot be the basis to determine backwardness;
    2. The EWS quota exceeds the ceiling cap of 50% set by the court;
    3. The rights of unaided private educational institutions.
- Although Chief Justice of India S A Bobde heads the Bench that made the reference, the case could wait to be heard by a larger Bench.
- The timing depends on the court's resources, as it would have to spare five judges and allocate time to the larger Bench hearing.

3.4 No Reservation in Promotions

What is the issue?

- The Supreme Court ruled that no individual including the Scheduled Caste and Scheduled Tribes could claim reservation in promotions.
- It said that the court could not issue a mandamus directing State governments to provide reservation.

What is the concern with this case?

- This verdict on reservation on promotions has affected the social justice and the advancement of the under-privileged.
- This case should have been dealt by a larger constitutional bench which could have a Scheduled Caste (SC) or Scheduled Tribe (ST) judge.
- So, it is the moral responsibility of the Union Government to appeal this case and request a constitutional bench hearing.

Is reservation in promotions a fundamental right?

- The scope for reservation for the Backward Classes is promised in Part III of the Constitution under Fundamental Rights.
- Articles 16(4) and 16(4A) empowers the state to provide reservation for SCs and STs in public employment.
- The right to equality is enshrined in the Preamble of the Constitution.
- Many see that the reservation is against Article 16 (Right to equality).
- But there is an absence of equal opportunities for the Backward Classes due to historic injustice by virtue of birth entails them reservation.
- Articles 16 (2) and 16(4) are neither contradictory nor mutually exclusive in nature, but are complementary to each other.

Is there any necessity to provide data on inadequate reservation?

- There is a question whether the quantifiable data for inadequate representation is a must for giving reservation in promotions.
- This question has been addressed by Article 16(4) in the Constitution.
- It reads that the State can make any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the State's opinion, is not adequately represented in the State services.
- Here, "in the State's opinion" should **not be construed as the discretion of the state** to give the reservation or not.
- On the contrary, it means if the state feels that SCs and STs are under-represented, it is in the domain of the state to provide reservation.
- There is **no mention in the Constitution** about quantifiable data.
- Even after 70 years of SC/ST reservation, their representation is as low as 3%.

Is it the obligation of the state to give reservation?

- It must be noted that when reservation rights are in Part III, it's the obligation of the state to ensure reservation to the underprivileged.
- This recent SC judgment has interpreted Articles 16 (4) and 16(4A) only as enabling provisions.
- Enabling provisions mean that these provisions empower the state to intervene; it does not mean the state is not bound to provide it.
- Interpreting the Constitution by paraphrasing and selective reading is dangerous.

What does this judgment say about administrative efficiency?

- This judgment has raised a new point that the decision of the State government to provide reservation for SC/STs shouldn't affect the efficiency of administration.
- This implies that the entry of SC/STs in the job market can reduce the quality of administration; this by itself is discriminatory.

- There is no evidence that performance in administration is affected on account of caste.
- There have been many attempts to dilute reservation in the past.
- But, this judgment appears to be debatable in the larger context and should be challenged in a constitutional bench.
- In a country of parliamentary democracy, even the Constitution of India can be amended.
- If the government at the Centre has genuine concern for SC/STs, it can amend the Constitution using its political majority.

Why reservation should be applied in promotions?

- As there is a peculiar hierarchical arrangement of caste in India, it is obvious that SCs and STs are poorly represented in higher posts.
- Denying application of reservation in promotions has kept SCs and STs largely confined to lower cadre jobs.
- Hence, providing reservation for promotions is even more justified and appropriate to attain equality.
- This judgment destabilises the very basis of reservation, when there is no direct recruitment in higher posts.
- This delineation of the scope of reservation as at the entry level and in promotions will only lead to confusion in its implementation.
- Now, by declaring that reservation cannot be claimed as a fundamental right is a dangerous precedent in the history of social justice.

3.5 7.5% Quota for Government School Students

Why in news?

The Tamil Nadu Cabinet approved an ordinance, envisaging 7.5% horizontal reservation in the State government's quota of MBBS/BDS seats, for students of government higher secondary schools.

What is the long-felt need?

- The decision is a well-intentioned move to address the problem of poor representation from government schools in MBBS/BDS courses.
- This issue has been in existence even prior to the introduction of NEET (National Eligibility-cum-Entrance Test).
- The issue of inequity has come in for criticism against NEET which came into operation in Tamil Nadu in 2017.
- Since then, there have been demands against NEET.
- Concerns were raised against the design and form of NEET.
- It was seen as being loaded against students of rural areas, government schools, Backward and Most Backward Classes, and SC/STs.
- Students from the CBSE stream perceivably enjoy greater advantage in NEET than those from the State board.
- Also, most candidates clearing NEET in Tamil Nadu are invariably those who undergo private coaching.
- The Cabinet decision now is based on a recommendation made by a panel in this regard.

What was the panel recommendation?

- It was headed by former judge of the Madras High Court, P. Kalaiyarasan.
- The panel had observed that there was a “cognitive gap” among students studying in government schools.

- It thus suggested that students who had passed the higher secondary exam after having studied for 7 consecutive years in government schools be provided reservation.
- The prerequisite for qualification is that they should have qualified in the NEET.
- The "quota within quota" covers government seats in private colleges too.

How legally sound is the ordinance?

- The proposed ordinance would be sent to the TN Governor Banwarilal Purohit for assent.
- It is unclear whether the horizontal reservation will pass legal scrutiny.
- In 2002, the Madras HC quashed the horizontal quota of 25% in professional courses for higher secondary students from schools in village panchayats.
- However, this time, the State has acted on a panel recommendation.
- Apparently, there is also nothing in NEET's rules against States providing "special reservation" out of their quota of seats.
- This was even articulated, in 2017, by former Union Health Minister J.P. Nadda, in favour of rural students.
- The trend of horizontal reservation is also happening with respect to national law universities for students from the host States.
- In Karnataka too, there is a scheme of horizontal reservation of 15% of State government seats for rural students in admission to professional courses.

3.6 Domicile Quota

What is the issue?

- Madhya Pradesh has reserved government jobs for the locals.
- By doing so, it has joined the bandwagon of States playing 'sons of the soil' politics.

What did the other States do?

- Haryana, Andhra Pradesh and Telangana have resolved to reserve jobs in both the government and private sectors.
- Telangana has decided to reserve 80% of semi-skilled jobs and 60% of skilled jobs for locals.
- Andhra Pradesh and Haryana have decided to reserve 75% of jobs.
- Karnataka is in the process of preparing a law in this regard.

What would be the legal challenges?

- The laws passed by these States could face a legal challenge for going against Article 19 (d) and (e) of the Constitution.
- Article 19 (d) spells out that all citizens shall have the right to move freely throughout the territory of India.
- Article 19 (e) spells out that all citizens can reside or settle in any part of the territory of India.

Where did this kind of politics originate?

- This strain of parochial politics has its origins that can be traced back to the politics of the Shiv Sena in the 1960s.
- It initially targeted 'South Indians' for monopolising white-collar jobs and later the blue-collar workforce from northern States.
- Ironically, the Shiv Sena has of late moved away from 'Marathi manoos' mobilisation, while other States are playing the domicile card.

- Gujarat, Tamil Nadu and Maharashtra have mercifully not followed up on quota promises for locals.
- Even so, such rhetoric can distort the labour market, particularly when local fringe groups create law and order complications.

What is so odd?

- Oddly enough, both the labour-supplying States as well as the receiving ones have played the domicile card.
- In the first case, the effort is to win over psychologically scarred migrants who have reverse migrated to 'home' in the wake of Covid.
- If the intent is to prevent forced migration, it should be addressed through sustained economic development initiatives.

What could be the impact of the domicile quotas?

- These quotas can raise costs and inefficiencies in labour-receiving States.
- It will also exert short-term pressure on labour-supplying States to create productive capacities.

What is the reality?

- According to the Economic Survey (2016-17), migrants account for over 20-30% of the workforce, or more than 100 million.
- Workers go to where jobs are available and labour is needed because locals are either unavailable or unwilling to do these jobs.
- Therefore, the concept of "outsiders snatching jobs from locals" is just an easy political sell - does not reflect reality.
- Shackling the individual rights of workers amounts to poor economics.
- It will also create conditions for social and economic instability.

What needs to be done?

- As for meeting the challenge of joblessness, a more inclusive, employment-centred model of growth is the need of the hour.
- An education and skilling ecosystem which produces "job-ready" workers is needed.
- But it is clear that almost every single one of them is already covered under the convergence programmes of MGNREGA.
- Also, there is no new "skill mapping" required for this as stated, since this work is already covered under MGNREGA.
- The nature of the work is manual, mainly construction and earth work including laying cables for Internet connections in rural areas.
- It is unstated but clear that this will benefit private telecom companies.
- Most importantly, there are apprehensions about the new scheme's impact on the MGNREGA work in these selected districts.
- There is no clarity on this critical issue in the set of guidelines issued by the Ministry of Rural Development, the nodal Ministry for this scheme.
- Last year, under MGNREGA, in these 116 districts taken together, an average of just 43.7 workdays were created.
- This was lower than the national average of 50 days.
- This poor record of provision of work may have been one of the reasons for the higher rates of migration from these districts.

- So, instead of new schemes, MGNREGA could be expanded to give work to all workers.
- This is a legal right, whereas the Garib Kalyan RojgarAbhiyaan has no such legal binding on the administration.
- Also, the scheme is primarily meant for migrant workers in those districts where their numbers are 25,000 or more.
- That means in these selected districts women who comprise a smaller percentage of migrant workers will be largely excluded.
- However, women in these districts had a high demand for work.
- This is reflected in the fact that the average of women working in MGNREGA in these districts last year was 53.5%.
- This was higher than the average for the rest of India.
- So unless this work in 116 districts is in addition to MGNREGA, women will suffer.

What should the future measures be?

- MGNREGA should not be diluted in the name of the Garib Kalyan RojgarAbhiyaan.
- The potential for MGNREGA to provide relief to the suffering of rural India should be utilised to its fullest capacity.
- This will also require a removal of the restriction of only one person per household to make every individual eligible.
- The cap of 100 days should be removed to expand it to at least 200 days.
- Unemployment allowance should be guaranteed for all those turned away from work.
- The Rs. 8,000 crore fund available to the States is clearly insufficient.
- It is therefore essential for the Central government to release the next set of funds without delay.

4. GOVERNMENT INTERVENTIONS

4.1 Swachh Survekshan 2020

Why in News?

The Union Ministry of Housing and Urban Affairs (MOHUA) has released the results of the Swachh Survekshan League 2020 recently.

What is Swachh Survekshan?

- The Swachh Survekshan is the world's largest cleanliness survey which covers more than 4370 Indian cities.
- It was rolled out 4 years ago as the answer to a problem that municipal law failed to solve.
- It is a completely digitized and paperless survey.

What is the survey's purpose?

- Sanitation and public health are responsibilities of State governments.
- It is no secret that they have spectacularly failed at managing growing volumes of municipal and hazardous waste.
- The problem has only been compounded by the absence of plans that take a holistic view of housing, sanitation, water supply, waste management and transport.

What did the MOHUA do?

- Ahead of the launch of Swachh Survekshan 2020, the Union MOHUA is trying to stir up competition among cities.
- It stirs up by pre-ranking them for their performance during 2019 and assigning points to be added this year.
- As an idea, unleashing the competitive spirit among States may seem appealing.
- **But in reality**, the problems confronting urban India require large-scale infrastructure creation, full adherence to legal requirements on waste management, and transparent technical audits.
- Many cities remain clueless on handling their waste.
- Bhopal, which figures among the top 5 cleanest cities under the just-released list, continues to live with the effects of the gas disaster of 1984.
- Ranks and prizes clearly cannot solve the national waste management crisis.

What are the targets fixed by the MOHUA?

- Looking ahead to the next edition of the Survekshan, the MOHUA has identified ambitious targets like,
    1. 100% processing and safe disposal of waste.
    2. Complete faecal sludge and septage management and
    3. Wastewater treatment and reuse.
- The Ministry has also sanctioned funds under the Atal Mission for Rejuvenation and Urban Transformation (AMRUT) to help States set up facilities necessary to manage waste.

What could be done?

- States should ask for **extended funding** under such schemes to create the infrastructure for a future-focused clean-up.
- Simultaneously, they should institute measures to reduce waste.
- The emphasis worldwide is on creating a circular economy centred at the principle of material recovery from all kinds of waste, reuse, recycling and reduced pressure on natural resources.
- A sound ranking of cities and towns would naturally give the highest weightage to this dimension of sustainable management, replacing symbolism with an environmentally sound approach.
- Such rigour in **policy formulation** can make the Centre's goal of eliminating single-use plastic by 2022 seem more realistic, and industry would find a compelling reason to switch to alternatives.
- Retooling Swachh Survekshan 2020 to go beyond perception management and **adopt sustainability** is essential to make it a genuine contest.

4.2 NSO Survey on Sanitation

Why in news?

- The latest National Statistical Office (NSO) survey on sanitation has been released recently.
- This has thrown light on the true status of the Swachh Bharat scheme's open defecation-free or ODF India goal.

What are the highlights of the report?

- Only 71% of rural households had access to toilets at a time the Centre was claiming 95%.
- On October 2, 2019, PM Narendra Modi declared that the whole country was ODF with complete access to toilets.

- Some large States were declared ODF i.e. 100% access to toilets and 100% usage, even before the NSO survey began.
- These included Andhra Pradesh, Gujarat, Maharashtra and Rajasthan.
- Others which were declared ODF during the survey period included Jharkhand, Karnataka, Madhya Pradesh and Tamil Nadu.
- But, according to the NSO, almost 42% of rural households in Jharkhand had no access to a toilet at that time.
- In Tamil Nadu, the gap was 37%, followed by 34% in Rajasthan.
- In Gujarat, which was one of the earliest States declared ODF, back in October 2017, almost a quarter of all rural households had no toilet access.
- The other major States listed also had significant gaps: Karnataka (30%), MP (29%), Andhra Pradesh (22%) and Maharashtra (22%).
- **Waste disposal** - Only 10% of toilets were built with the twin leach pit system pushed by the Swachh Bharat scheme.
- This safely composts waste on its own without any need for cleaning or disposal.
- More than 50% of rural Indian households with toilets had septic tanks, while another 21% used single pits.
- Both of these needs to be cleaned and faecal sludge produced must be disposed of safely.
- The NSO data thus indicates that the next big challenge may lie in the disposal of waste.

What does the report indicate?

- Though the government claims were invalidated, there is notable progress recorded in toilet access and use in rural areas.
- The 71% access to toilets is a significant improvement over the situation during the last survey period in 2012.
- In 2012, only 40% of rural households had access to toilets.
- The NSO survey had also noted that 95% of people with access to toilets in rural India used them regularly.
- This shows that the Swachh Bharat Abhiyan's efforts to change behaviour have borne fruit.
- This was aided by the fact that water was available around the toilet in more than 95% of cases.

4.3 Committee for the Reform of Criminal Laws

Why in news?

The Ministry of Home Affairs (MHA) has constituted a national level 'Committee for the Reform of Criminal Laws'.

What is the committee for?

- The criminal law in India comprises -
  1. the Indian Penal Code of 1860
  2. the Code of Criminal Procedure that was rewritten in 1973
  3. the Indian Evidence Act that dates back to 1872
- The idea that the current laws governing crime, investigation and trial require meaningful reform has long been in place.
- There have been several attempts in recent decades to overhaul the body of criminal law.
- Given this, the committee's mandate now is to recommend reforms in the criminal laws in a principled, effective, and efficient manner.

- The reforms should ensure the safety and security of the individual, the community and the nation.
- It should prioritise the constitutional values of justice, dignity and the inherent worth of the individual.

How does it work?

- The committee has several leading legal academicians on board.
- It would be gathering opinions online, consulting with experts and collating material for their report to the government.
- Questionnaires have been posted online on the possible reforms.
- The committee has invited experts in the field of criminal law to participate in the exercise through an online consultation mechanism.
- The consultation exercise would go on for 3 months (starting on 4 July 2020).

What are the concerns?

- **Timeframe** - Comprehensive legal reform requires careful consideration and a good deal of deliberation.
- An apparently short timeframe and limited scope for public consultation has thus been raised as concerns.
- This has caused considerable disquiet among jurists, lawyers and those concerned with the state of criminal justice in the country.
- **Timing** - The Committee has begun its work in the midst of a pandemic.
- This may not be the ideal time for wide consultations.
- Activists and lawyers functioning in the hinterland may be at a particular disadvantage in formulating their opinions.
- **Mandate** - The panel's mandate is also vague and open to multiple interpretations.
- It is also not clear why the Law Commission has not been vested with this task.
- **Members** - The committee being an all-male, Delhi-based one has led to concerns of lack of diversity.

4.4 Pradhan Mantri Garib Kalyan Yojana

Why in news?

Union Finance Minister announced an Rs 1.70 lakh crore 'Pradhan Mantri Garib Kalyan Yojana' relief package.

What is the story behind?

- A nationwide lockdown was imposed recently to stop the novel coronovirus in its tracks.
- This has led to scores of daily wage workers and informal sector entrepreneurs losing earning opportunities from their existing activities.
- To alleviate the distress of those least equipped to bear the cost of staying home for the larger public interest of battling the COVID-19 pandemic, Rs 1.70 lakh crore relief package was announced.

What is a significant component of the relief package?

- The increased entitlement of food grains supplied through the public distribution system (PDS) is a major intervention.
- Currently, the PDS provides 5 kg of cereals per person per month at Rs 2/kg and Rs 3/kg for wheat and rice, respectively.
- Under the package, an additional 5 kg of wheat or rice would be given per person per month, free of cost.
- The doubling of entitlement, effective for the next 3 months with the extra grain coming free, will meet the family's entire cereal requirement.

- Roughly, 80 crore persons or two-thirds of India's population covered under the National Food Security Act will benefit.
- Further, they will receive 1 kg of pulses per family per month, again free of cost for the next three months.

What will be the costs and savings?

- **Cost** - An average economic cost for procuring and distributing wheat or rice by the Food Corporation of India (FCI) could be around Rs 30/kg.
- So, 80 crore persons being provided 15 kg each of free grain (over three months) would translate into an additional outgo of Rs 36,000 crore.
- **Savings** - The economic cost does not include the FCI's expenses in holding and maintaining excess stocks in its godowns.
- This carrying cost (interest and storage charges) is estimated at Rs 5.61 per kg in 2019-20.
- For 15 kg of grain for 80 crore people, it would be over Rs 6,700 crore.
- So, the net outgo for the exchequer will be well under Rs 30,000 crore.
- Given the Government of India is now holding some 77.6 mt of cereals (3.5 times more than required) and 2.2 mt of pulses, this is also an effective way to dispose of excess stocks.

What is the relief measure for LPG cylinders?

- LPG gas cylinders would be distributed free to 8 crore poor families for the next three months.
- An average non-subsidised cylinder would cost Rs 800. So, distributing them for free would cost Rs 19,200 crore.
- As the government will secure the basic dal, roti and cooking fuel requirement for those worst hit by the lockdown, it is worth bearing.

What is the relief measure under MNREGA?

- An enhancement of daily wages from an average of Rs 182 to Rs 202 under MNREGA was announced, which is not an effective measure.
- In today's context, the only way to compensate the locked down daily wage earners under MNREGA is through unemployment allowance.
- However, the onus for paying that under the Act is on the state governments.
- It is unlikely they would make the necessary budgetary provision.

What are the cash transfer components of the relief package?

- A total of 20.4 crore of bank accounts belonging to women under the Pradhan Mantri Jan Dhan Yojana are to be credited Rs 500 each per month for the next 3 months through direct benefit transfer (DBT).
- That is hardly any recompense for those forced out of work.
- Nor is the payment of Rs 2,000 to 8.7 crore farmers under the Pradhan Mantri Kisan Samman Nidhi.
- Farmers will anyway be receiving the first instalment payment of Rs 2,000 due in April, from their Rs 6,000 annual income support for 2020-21.

What does the package really amount to?

- For economic agents (particularly poor households and small businesses), the main crisis today is a crisis of liquidity.
- Unlike big businessmen or the salaried middle class, these are people with no balance sheets, reserves, or bank balances.
- Every day's loss of work for them means cutting down even basic consumption and going deeper into debt.

- Free grain can help, but does not address the real crisis of liquidity.

4.5 SC Order in TN Liquor Case

Why in news?

The Supreme Court ordered a stay on Madras HC's order 'barring the sale of liquor through retail stores and mandating online sales alone', in a case by Tamil Nadu.

What was the case about?

- The Madras High Court initially allowed the State government to open its vast network of liquor shops amidst lockdown.
- Outlets of the State-run TASMAC were permitted to open, subject to several conditions for maintaining physical distancing.
- However, the State witnessed scenes of unmanageable crowds and long queues when shops re-opened.
- As there was overwhelming evidence that physical distancing had been compromised, the HC banned across-the-counter sales.
- It directed that only online sale be permitted.

What does the SC order indicate?

- States' revenues are dwindling due to the stagnation in economic activity since the national lockdown began.
- States are desperate to raise money to combat disease spread and to keep their public health services going.
- It is this desperation that led Tamil Nadu to rush to the Supreme Court to obtain a stay on a Madras High Court order.
- The conflict between fiscal health and public health is quite real for the States.
- Notably, the number of people testing positive for the novel coronavirus is increasing in TN.
- But the top court seems to be mindful of the need to preserve the policy space of States.

Is the State's argument valid?

- The State government's argument that the HC ought not to have interfered in a policy matter may be sound.
- And this had logically impressed the Supreme Court.
- However, the state's claim that online sale was not possible in a State like Tamil Nadu raises doubts.
- The reality is that selling liquor online would cut into the unaccounted extra fee that TASMAC staff charge for every purchase.
- At Rs. 5 to Rs. 10 for each sale, this amount runs into crores of rupees annually and is believed to be shared among vested interests.
- Only higher investment and rapid growth can create sufficient employment opportunities.

4.6 SDG India Index 2019

Why in news?

NITI Aayog has recently released the 'SDG India Index 2019'.

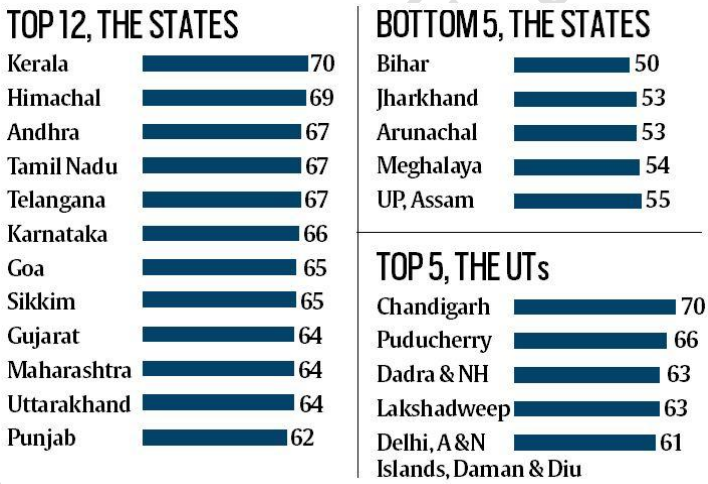
What is SDG India Index?

- The index aims to measure India and its States' progress towards the Sustainable Development Goals (SDGs) for 2030.
- The SDGs of the UN have 17 goals and 169 related targets to be achieved by 2030.

- The SDG India Index 2019 has been constructed spanning across 16 out of 17 SDGs with a qualitative assessment on SDG 17.
- The 2019 Index ranked states and UTs based on 54 targets spread over 100 indicators out of 306 outlined by the UN.
- It measures their progress on the outcomes of the interventions and schemes of the Government of India.
- The Index is intended to provide a holistic view on the social, economic and environmental status of the country and its States and UTs.
- The first report, which was launched in 2018, had 13 goals and 39 indicators.

What are the highlights of the 2019 index?

- **Ranking** - Kerala retained its rank as the top state with a score of 70.
- Chandigarh too maintained its top spot among the UTs with a score of 70.
- Himachal Pradesh took the second spot while Andhra Pradesh, Tamil Nadu and Telangana shared the third spot.
- Bihar, Jharkhand and Arunachal Pradesh are the worst performing states.
- Uttar Pradesh, Odisha and Sikkim have shown maximum improvement.
- West Bengal (rank 14) has also done well, but given the education level in the state, it should be in top 3 performing states.



- On the other hand, states like Gujarat have not shown any progress vis-a-vis 2018 rankings.
- **Progress** - Only 3 states were placed in the category of Front Runners (with a score in the range 65-99) in 2018.
- These were Himachal Pradesh, Kerala, and Tamil Nadu.
- In 2019, 5 more states joined this league- Andhra Pradesh, Telangana, Karnataka, Sikkim and Goa.
- **Parameters** - With regard to poverty reduction, Tamil Nadu, Tripura, Andhra Pradesh, Meghalaya, Mizoram and Sikkim have done well.
- On 'zero hunger' parameters, Goa, Mizoram, Kerala, Nagaland and Manipur were the front-runners.
- **India** - India's composite score improved from 57 in 2018 to 60 in 2019.
- The major contribution was success in water and sanitation, industry and innovation.
- However, nutrition and gender continue to be problem areas for India, requiring more focused approach from the government.

4.7 Rise in MGNREGA Workers - Reversing Job Trend

What is the issue?

- The Indian economy is in the midst of a severe slowdown and the data suggests that a sharp recovery in the near term is unlikely.
- In this backdrop, the changes in the job scenario call for immediate intervention to utilise the demographic potential.

What is the recent shift in the job scenario?

- There is an increase in the number of young workers waiting for work under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).
- The number of workers employed in the 18-30 years age group under this reached 7.07 million in 2018-19 compared to 5.8 million in 2017-18.
- There is clearly a higher enrolment of people in the 18-30 age bracket in the subsistence-level job guarantee programme.

Why is this shift?

- The above indicates a severe lack of employment opportunities.
- The GDP data for the 2019 April-June quarter showed that growth in the construction sector declined to 5.7%.
- Expansion in the manufacturing sector collapsed to 0.6%.
- Subdued activity in these sectors and their inability to absorb labour could have pushed workers to seek employment under the MGNREGA.
- It is also likely that distress in agriculture could have affected the demand for labour in rural areas.
- A 2017 discussion paper by the NITI Aayog showed that about two-thirds of income in rural India is now generated through non-agricultural activities.
- About half the construction and manufacturing sector output comes from rural areas.
- It also contributes significantly to the services sector output.
- The manufacturing units in rural areas are possibly losing out because of size and greater formalisation of the economy after GST implementation.

Why is job creation crucial now?

- At a broader level, the inability of the Indian economy to create enough jobs can have longer-term consequences.
- India is witnessing a demographic transition with a significant increase in the proportion of the working-age population.
- The working-age population in absolute terms is likely to grow by about 9.7 million per year between 2021 and 2031.
- This growth will slow in the subsequent years.
- Certainly, India cannot afford to lose this opportunity.
- It will not be able to take advantage of a rising workforce without creating enough employment opportunities.
- But, as the evidence suggests, this is not happening at the moment.

What is to be done?

- The situation forcing young workers to enroll for the MGNREGA work needs to be reversed.
- Revering this trend will require more investment, which will help generate jobs.
- In this context, the government has done well to reduce the corporate tax rate.
- Over the last few years, India has moved up significantly in the World Bank's Ease of Doing Business ranking.
- However, India needs to do a lot more, particularly in areas such as land registration and contract enforcement, to attract investment.
- Therefore, the pace of reforms must be accelerated.

5. VULNERABLE SECTIONS

5.1 Bidar Sedition Case

What is the issue?

- Police are pursuing a complaint about a play performed by children of the age 9 to 12 of a private school in Bidar district of Karnataka.
- This case is an instance of the misuse of the sedition provision under Section124A of the Indian Penal Code (IPC).

What is the Sedition law?

- **Section 124A** of the IPC which was included in 1870 deals with sedition.
- It states that whoever brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished.
- The punishment varies from imprisonment up to 3 years to a life term and fine. Sedition is a **non-bailable offence**.

What were the actions taken?

- The police have taken **action for an allegedly seditious play** against the Citizenship (Amendment) Act.
- A teacher who supervised the performance and the parent of a child who added words to the script of the play were arrested.
- The primary school children are subjected to sustained harassment with utter disregard for child-friendly legislations.
- These actions are clear case of misuse of the power to arrest, as it is merely a verbal offence and doesn't require custodial interrogation.
- The police have deemed the opposition to the amendment act as something against the state.

What is the observed trend?

- A Supreme Court Bench observed that words such as 'anti-national' and 'sedition' were being bandied about loosely these days.
- The incident in Bidar serves as an example of this trend.
- This incident also confirms that the law is often used to silence political comment on matters deemed sensitive by the rulers.

How Sedition should be invoked?

- Sedition has been invoked to portray political dissent as promotion of disaffection.
- But, it can't be invoked without the essential ingredients for invoking the section, namely, an imminent threat to public order and incitement to take up arms or resort to violence.
- This is a fact that is being forgotten often.
- The section itself has an explanation that nothing that seeks to get the government to change its policy by lawful means is sedition.

What could be done?

- The police system believes that everyone who is suspected of committing an offence is to be arrested
- This belief is something that needs to be changed.
- The conduct rules to punish the police personnel who violate the constitutional guarantees of free speech and personal liberty in an arbitrary way should be strengthened.

5.2 Ways to Treat a Child Witness

What is the issue?

- The police have been allegedly violated the rules while questioning the school children in Bidar (Karnataka) for a case.
- After this, much of the spotlight has been on reports of how the police treated the children.

What are the international conventions?

- Since 1992, India has been a signatory to the United Nations (UN) **Convention on the Rights of the Child of 1989**.
- The Convention states that in all actions concerning children, whether undertaken by public or private social welfare institutions, law courts, etc, the best interests of the child shall be a primary consideration.

What are the international guidelines?

- 'UN: Justice in Matters involving Child Victims and Witnesses in Crime: **Model Law of 2009**' provided a more specific set of guidelines in the context of child witnesses.
- It recommends that authorities treat children in a caring and sensitive manner, with interview techniques that minimise trauma to children.
- They recommend specifically that an investigator specially trained in dealing with children be appointed to guide the interview of the child.
- The investigator shall, to the extent possible, avoid repetition of the interview during the justice process in order to prevent secondary victimisation of the child.
- [Secondary victimisation - Occurs not as a direct result of a criminal act, but through the response of institutions and individuals to the victim.]

How do Indian laws address the issue of child witnesses?

- Under **Section 118 of the Indian Evidence Act, 1872**, there is no minimum age for a witness.
- Usually during a trial, the court, before recording the testimony of a child witness, determines their competency on the basis of their ability to give rational answers.
- When a child doesn't understand the significance of taking an oath to speak the truth, the judge or the staff should explain to the child that s/he should speak the truth.

Have courts dealt with how child witnesses are to be treated?

- The Delhi High Court (HC) has come up with guidelines for recording of evidence of vulnerable witnesses in criminal matters.
- [Vulnerable witness - Anyone who has not completed 18 years of age.]
- These guidelines allow for a facilitator for such a witness to be appointed by a court for effective communication between various stakeholders.
- In 2016, the Delhi HC said that while children can be pliable, their testimony can be considered after careful scrutiny.

What does the JJ Act say about questioning of children?

- The Juvenile Justice (Care and Protection of Children) Act, 2015 is the primary legislation in the country pertaining to children.
- It says that a **child-friendly approach** in the adjudication and disposal of matters in the best interest of children must be adhered to.
- It also requires that interviews of children be done by specialised units of police who are trained to sensitively deal with them.

- It prescribes that a **Special Juvenile Police Unit** is to be constituted by the state government in each district and city.
- Their work includes coordinating with the police towards sensitive treatment of children.
- The Act also provides for a **Child Welfare Committee** in every district to take cognisance of any violations by the authorities in their handling of children.

What does the POCSO Act say about questioning of children?

- The Protection of Children from Sexual Offences (POCSO) Act, 2012 has specific guidelines regarding interviewing children as witnesses.
- While it **pertains to child sexual abuse victims**, child rights activists say the guidelines are a framework for all children witnesses who are being interviewed by the police.
- The Act states that interviews should be conducted in a safe, neutral, child-friendly environment.
- It also says a child should not be made to recount the incident in question multiple times.
- The Act allows for a support person, who could be trained in counselling, to be present with the child to reduce stress and trauma.

5.3 UN Guidelines for PwD

Why in news?

The United Nations has released its guidelines on access to social justice for people with disabilities (PwD).

What are the guidelines?

- All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.
- Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.
- PwD, including children with disabilities, have the right to appropriate procedural accommodations.
- PwD have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.
- PwD are entitled to all safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.
- PwD have the right to free or affordable legal assistance.
- PwD have the right to participate in the administration of justice on an equal basis with others.
- PwD have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.
- Effective and robust monitoring mechanisms play a critical role in supporting access to justice for PwD.
- All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of PwD.
- These 10 principles would make it easier for the PwD to access justice systems around the world.

How does the UN define a person with a disability?

- The UN Convention on the Rights of Persons with Disabilities, adopted in 2007, has defined PwD.
- Persons with Disabilities are those who have long-term physical, mental, intellectual or sensory impairments.
- These impairments along with various barriers may hinder the person's full and effective participation in society on an equal basis with others.

What does discrimination on the basis of disability mean?

- The UN states that the 'Discrimination on the basis of disability' means any distinction, exclusion or restriction on the basis of disability.
- These discriminations have the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in any field.
- It includes all forms of discrimination, including denial of reasonable accommodation.
- Reasonable accommodation means the modification and adjustment in a particular case so that PwD can exercise human rights and fundamental freedoms on an equal basis.

How many people are disabled in India?

- As per the UN, in India 2.4% of males are disabled and 2% of females from all age groups are disabled.
- Disabilities include psychological impairment, intellectual impairment, speaking, multiple impairments, hearing, seeing among others.
- In comparison, the disability prevalence in the US is 12.9% among females and 12.7% among males.

5.4 Withdrawal of Tax on Disability Pension

Why in news?

The government has directed the banks, not to deduct income tax on pension and disability benefits provided to disabled retired military personnel.

What is the story behind?

- A circular was issued by the Principal Controller of Defence Accounts (PCDA) in February, 2020.
- This circular allowed the banks to deduct the income tax on pension and disability benefits.
- It was based on a June 2019 notification of the Central Board of Direct Taxes (CBDT) which provided exemption to those invalidated from service due to bodily disabilities.
- But, the sudden deduction of tax liabilities by the banks led to a public outrage, forcing the government to keep the decision in abeyance.
- The defence accounts department has been directed by the government to withdraw this circular.

What are the categories of disabled veterans?

- They are classified under three categories: battle casualties (war wounded), battle casualties and disabilities due to service conditions.
- **Battle casualties (war wounded)** - Military personnel who have been disabled due to wounds or injuries suffered by them in operations with the enemy or such like operations.
- **Battle casualties** - Military personnel who have been declared battle casualties but have not suffered injuries due to physical wounds.
- **Disabilitiesdue to serviceconditions** - Military personnel who have been disabled due to conditions of service, wherein some of the disabilities akin to lifestyle diseases are also included.

How are benefits given to disabled personnel?

- **Benefits** are based on the percentage of disability.
- Less than 20% disability is not entitled to any benefits while those with 50% disability, 75% disability and 100% disabled are entitled to.
- **Amount of disability pension** given is also based on the percentage of disability.
- A percentage of last pay drawn on retirement by the military personnel is given as disability pension for the three categories of disabled veterans.

Are these disability pensions tax-free?

- The entire pension and disability element of pension in all the categories is exempt from payment of income tax.
- But the June 2019 CBDT notification had said that tax exemption on disability pension would be available only to personnel who had been invalidated from service and not to personnel who had retired otherwise.
- This has been challenged in the Supreme Court which, in a 2019 order, directed all parties to maintain 'status quo' on the matter.

What is the current controversy about?

- The PCDA circular was issued for taking "necessary action" on the 2019 CBDT notification.
- Then banks started debiting tax at source for the entire financial year 2019-20 from the February pension of retired military personnel who were receiving disability pension.
- This led to several pensioners receiving as little as Rs.1000 in their accounts.

5.5 Religious Freedom Report 2020

Why in news?

The US Commission on International Religious Freedom (USCIRF) has released its report for 2020.

What is the USCIRF?

- The USCIRF is an independent, bipartisan **U.S. federal government commission**.
- It was created by the International Religious Freedom Act (IRFA), 1998.
- The USCIRF is dedicated to defending the universal right to freedom of religion or belief abroad.
- It monitors religious freedom violations globally and makes policy recommendations to the President, the Secretary of State, and Congress.

What did the report say?

- In the 2020 report, the USCIRF has downgraded India as "Country of Particular Concern (CPC)".
- It has placed India alongside countries, including China, North Korea, Saudi Arabia and Pakistan.
- [In the 2019 report, India was characterised as a "Tier 2 country".]
- The commission recommended that the U.S. government take stringent action against India under the IRFA.
- It called on the U.S. administration to impose targeted sanctions on Indian government agencies and officials responsible for severe violations of religious freedom.

Why did the USCIRF characterise India as a CPC?

- The USCIRF noted that India took a sharp downward turn in 2019.
- The report included the specific concerns about,
    1. The Citizenship Amendment Act,
    2. The proposed National Register for Citizens,
    3. Anti-conversion laws and
    4. The situation in Jammu and Kashmir
- The commission stated that these concerns are the reasons why it downgraded India in the report.

What was the Indian response?

- The Indian government repudiated the report and ridiculed the USCIRF.

- The Ministry of External Affairs had rejected the USCIRF statement as neither "accurate nor warranted".
- It also questioned the body's "locus standi" in India's internal affairs.

Will U.S. act as per these recommendations?

- Whether or not the U.S. government acts on the commission's recommendations depends on American strategic interests.
- The U.S. has used arguments of freedom, democracy, tolerance, and transparency as tools in its strategic pursuits.
- But there is no proof of any uniform or predictable pattern of enforcement of such moral attributes.
- The process can be selective and often arbitrary in spotlighting countries.

What is the pattern that India mirror?

- Mirroring the U.S. pattern, India selectively approaches global opinions on itself.
- It embraces the laudatory ones and rejects the inconvenient ones.
- Overall, the global reports contribute to the construction of an image of a country, and the Indian government is aware of this pattern.
- In March 2020, the Indian government told NITI Aayog to track 32 global indices and engage with the bodies that measure them, to advance reform and growth.

What should India focus on?

- **Ambitions** - India advertises itself as a multi-religious democracy and as an adherent to global norms of rule of law.
- It also aspires to be on the table of global rule making.
- For a country with such stated ambitions, its record on religious freedom as reflected through events of the last one year is deeply disconcerting.
- **Essentials** - Reputation is important for a country's economic development and global standing.
- But, the rule of law and communal harmony are essential for any functioning democracy.
- Religious freedom is of paramount importance, not because it is about religion, but because it is about freedom.

5.6 National Crime Records Bureau Data

Why in news?

The National Crime Records Bureau (NCRB) released the much delayed crime data for 2017.

What are the categories of data?

- The NCRB has introduced more than three dozen new categories and sub-categories of crimes under various heads.
- At least four categories where significant diversification of data can be seen are -
    i. crimes against women and children
    ii. atrocities against Dalits
    iii. cases of corruption
    iv. time taken by police and courts to take cases to their conclusion
- For the first time, the NCRB has introduced categories of cyber crimes against women and children.

- In the case of Dalits, the NCRB has for the first time published data on offences registered solely under the SC/ST (Prevention of Atrocities) Act.
- The further categorisation under this includes insult, land grab and social ostracism.
- The NCRB has also recorded cases of disproportionate assets against public servants.
- The other heads include abetment, criminal intimidation, simple hurt, credit/debit card and online frauds, Internet crimes through online gaming and kidnapping for begging among others.
- Importantly, for the first time, the NCRB has dwelt on not just pendency of cases (with the police and courts) but also the period of such pendency.

What are the highlights?

- **Women and children** - In the case of women and children, the NCRB has this time recorded data for "murder with rape".
- In 2017, close to 33,885 women were reported to have been raped across the country.
- Of these, 227 were murdered after the rape.
- Close to 28,150 children were raped with cases registered under IPC and the POCSO Act.
- Of these, nearly 150 were killed after being raped.
- The NCRB has, however, removed the category of gangrape that was introduced to its database following the December 2012 gangrape case.
- In the category of cyber crimes against women, nearly 4,200 offences were recorded.
- It includes cases where women were stalked, blackmailed or their morphed pictures were uploaded on the internet.
- In a sub-category for SLL (special and local laws) cyber crimes against women, the number of women-centric crimes is given as 600.
- Of this, 271 relate to publishing or transmitting of sexually explicit material under the Information Technology Act.
- The report has also introduced the categories of sexual harassment at the workplace and in public transport.
- As many as 479 and 599 cases were reported in 2017 under these categories respectively.
- Also, nearly 33,600 cases were registered and close to 40,400 juveniles arrested during the year.
- Majority of juveniles in conflict with law apprehended under IPC and SLL crimes were in the age group of 16 to 18 years.
- These cases accounted for around 72% of cases during 2017.
- **Justice delayed** - In the latest report, the NCRB, besides the numbers, has also recorded the period of pendency.
- For IPC crimes, police are supposed to file a charge-sheet within 90 days.
- The data show that police delayed charge-sheets in 40% of cases.
- In certain cases such as rioting, which includes communal riots, police delayed filing of charge-sheets in 60% of the cases.
- There are more than 3 lakh cases pending investigations for more than one year.
- In more than 40% of cases, the fast-track courts have taken more than 3 years to finish the trial.
- In fact, in as many as 3,384 cases committed to fast-track courts, the trial was finished in more than 10 years.

- Of the 38,000-odd cases that fast-track courts completed in 2017, over 4,500 cases had been running for 5-10 years.
- In only around 11,500 cases was the trial completed within one year.
- In courts as a whole, more than 2,71,000 cases were pending trial at the end of 2017.
- **Other data** - Under the category of rioting, new subcategories have been added which include vigilante action, disputes over water, power and property and rioting during morchas.
- Some other new data include spreading of fake news where 257 offences have been recorded.
- As many as 952 election-related offences were also recorded in 2017 apart from offences relating to religion (1,808) and Obscene Acts and Songs at Public Places (29,557).

What are the key drawbacks in the report?

- **Hate crimes** - The report omits data on mob lynchings, khap killings, murder by influential people and killings for religious reasons.
- A few months ago, government officials had blamed the States of West Bengal and Bihar for lackadaisical responses in sending data in this regard.
- The Supreme Court, in 2018, in an order, called for a special law to deal with lynching.
- Data on such hate crimes would have been useful in both law enforcement and jurisprudence.
- But the Central government has time and again argued against the need for a separate law.
- It has affirmed that curbing lynching was a matter of "enforcement".
- As of now, there exist only a few independent "hate crime trackers" based on media reports.
- Without a proper accounting of hate crimes, tackling them effectively is hard.
- **State-wise variations** - The NCRB data on crime hide significant variances in case registration of serious crimes such as rapes and violence against women across States.
- This makes it difficult to draw State-wise comparisons.
- The total number of crimes committed against women country-wide increased by 6% since 2016, while those against dalits went up by 13%.
- However, there is the possibility of some States reporting such crimes better.
- This is pertinent, particularly in rape cases.
- E.g. the UT of Delhi registered a rate of 12.5 per one lakh population, surpassed only by MP (14.7) and Chhattisgarh (14.6)
- But the filing of rape complaints in Delhi have significantly increased following public outcry over the December 2012 rape incident.
- This could partially explain the high rate of such cases.
- The higher record of IPC crimes in Delhi among metropolitan cities in 2017 is also likely due to the use of easier (online) means to register them.
- **Assessment methodology** - The report uses the census base year as 2001 to calculate crime rates for States and 2011 for metropolitan cities.
- This makes the assessments unwieldy.

5.7 Prison Statistics India 2017

Why in news?

The National Crime Records Bureau (NCRB) recently released the "Prison Statistics India 2017" report.

What are the highlights?

- **Prison deaths** - The number of deaths in prisons has increased marginally from around 1,580 in 2015 to around 1,670 in 2017, with a surge of 5.49% during 2017.
- The NCRB also found that there is a minuscule increase in deaths inside prisons in 2017 as compared to 2016.
- Out of the 1,671 deaths in 2017, 1,494 were natural and 133 unnatural.
- The number of unnatural deaths in prisons has increased by 15.7% from 115 in 2015 to 133 in 2017.
- Among the 133, 109 inmates have committed suicide, 9 died in accidents, 5 were murdered and 5 died due to assault by outside elements.
- For a total of 44 inmates' deaths, the cause of death is yet to be known.
- **Escaped** - A total of 371, 577 and 378 prisoners were reported as escaped from lawful custody during the years 2015, 2016 and 2017 respectively.
- During 2017, 215 prisoners were reported as escaped from judicial custody.
- Gujarat has reported escapee of 90 prisoners while they were outside prison premises followed by WB (11), and Bihar and Rajasthan (8) each.
- Apart from escape from Judicial Custody, 163 prisoners escaped from Police Custody.
- Highest of such escape from police custody was reported by UP (39) followed by Punjab (17) and Andhra Pradesh (15).
- **Other incidents** - A total of 15 jail break incidents were reported in 2017 with 10 cases in West Bengal.
- A total of 88 clash incidents inside jails were reported in 2017.
- The highest of such clashes were reported by Bihar (35) followed by Delhi (19) and Punjab (11).
- A total of 204 persons consisting of 181 prisoners and 23 jail officials got injured in such clashes and 1 prisoner died.
- In 2017, no incident of firing was reported across the jails in the country.
- **Prisoners** - The number of prisoners lodged in various jails has increased by 7.4% from 2015 to 2017.
- In 2017, out of the around 4,50,700 prisoners, around 4,31,800 were male prisoners and 18,800 were female prisoners.
- Out of the total prisoners, the convicts, undertrial inmates and detenues were reported to be comprising 30.9%, 68.5%, and 0.5% respectively.
- Other prisoners accounted for 0.2% (693 prisoners) of total prisoners.
- The number of convicted prisoners has increased by 3.7% from 2015 to 2017.
- The highest number of convicted prisoners lodged in Central jails were recorded to be 66.3%, followed by district jails 27.9% and Open jails 2.4%.
- **Prisons** - The total number of prisons at national level has decreased from 1,401 in 2015 to 1,361 in 2017, with a decrease of 2.85% during 2015-2017.
- There are 1,361 prisons in the country - 666 Sub jails, 405 District jails, 142 Central jails, 64 Open jails, 41 Special jails, 22 Woman jails, 19 Borstal School (to reform young people) and 2 other jails.
- The actual capacity of prisons has increased by 6.8% during 2015-2017.

5.8 US Supreme Court Ruling on LGBTQ Employees

Why in news?

The US Supreme Court (SC) ruled that the federal law that prohibits discrimination based on sex should be interpreted to include sexual orientation and gender identity as well.

What does this mean?

- The ruling is in relation to Title VII of the Civil Rights Act of 1964.
- The Title prohibits employment discrimination based on race, colour, religion, sex and national origin.
- The US SC has now said that 'sex' here should be interpreted to include sexual orientation and gender identity as well.
- In other words, LGBTQ employees will also be protected under this Title.

What is the significance?

- The ruling involved three cases filed by employees, who are Aimee Stephens, Donald Zarda and Gerald Bostock.
- They claimed they were fired from their jobs because of their sexual orientation or gender identity.
- The ruling comes as a landmark victory for LGBTQ equality.
- It notably comes just a few days after US President Donald Trump rolled back some Obama-era regulations.
- The regulations prohibited discrimination in health care against transgender patients.

What lies ahead?

- For the past two decades, federal courts have determined that discrimination based on LGBTQ status is unlawful under federal law.
- The present historic ruling by the Supreme Court affirms that view.
- But in many aspects of the public square, LGBTQ people still lack non-discrimination protections.
- There are still too many places in law that lack protections in this regard.
- In this line, it is crucial that the Congress pass the Equality Act.
- The Act will codify protections for LGBTQ people in employment, housing, credit, education and jury service.
- This would go a long way in addressing the significant gaps in federal civil rights laws and improve protections for everyone.

5.9 Custodial Deaths - Tamil Nadu Case (Sathankulam)

Why in news?

'Custodial death' of a father and son in Sathankulam town in Tamil Nadu's Thoothukudi district has led to protests.

What happened?

- The deceased have been identified as P. Jayaraj (58), a timber trader, and his son, J. Benicks, 31.
- They ran a mobile phone service and sales centre in Sattankulam town in Thoothukudi district.
- On June 19, 2020, Jayaraj was in the mobile phone showroom of his son Benicks.
- Personnel from the Sathankulam police station were on patrol duty in the evening.
- The police picked him up for allegedly keeping the shop open in the evening in violation of lockdown restrictions.
- The police reportedly verbally abused Jayaraj and assaulted him.

- His son Benicks, who came to the spot, appealed to the police to release his father.
- When the police allegedly assaulted Jayaraj with a baton and roughed him up, Benicks tried to save his father.
- After thrashing the father and the son, the officers took them to the police station.
- The father and the son were arrested for allegedly keeping their outlets open after permitted hours.
- Both of them were booked under several sections of the IPC including -
    i. Section 188 (disobedience to order duly promulgated by public servant)
    ii. Section 383 (extortion by threat)
    iii. Section 506 (ii) (criminal intimidation)
- They were remanded to judicial custody.
- The third day, after a medical check-up, the duo was lodged in the Kovilpatti sub-jail.
- That evening, local residents alleged that Benicks had complained of chest pain and Jayaraj had high fever.
- Both were taken to the Kovilpatti government hospital, where Benicks died the next day evening.
- The morning of the following day, Jayaraj too developed "chest pain", had respiratory illness and died.
- Relatives alleged that both of them were thrashed again in the police station, as they were witnessing it from the entrance of the police station.
- Eye-witnesses have said that the father-son duo had suffered sexual torture (inflicted using lathis) at the police station.
- Jayaraj's wife Selvarani has lodged a complaint, alleging that police brutality led to the death of her husband and son.

What was the State's response?

- In a swift response, the Madurai Bench of the Madras High Court took suo motu cognisance of their death.
- It has decided to monitor the progress of the statutory magisterial probe.
- It has asked for a status report from the police, and also directed that the autopsy be video-graphed.
- Chief Minister Edappadi K. Palaniswami has announced a compensation of Rs. 10 lakh each.
- The two sub-inspectors involved have been suspended and an inspector placed on compulsory wait.

What are the serious concerns involved in this?

- **Custodial violence** is not new to India.
- Custodial deaths are often the result of the use of torture in India's police stations for extracting admissions of crime.
- It is also common for the police to use their power and authority to settle personal scores.
- But even with such track record, the death of Jayaraj and Benicks is alarmingly absurd given the cause of arrest and the kind of violence inflicted.
- It is a wrongful abuse of authority by the law enforcement machinery.
- In this case, the father was thrashed even before being taken to the police station.
- **Lockdown** -Since the lockdown, there have been innumerable reports of the police and officials attacking citizens in the name of enforcing restrictions.
- They have been awarding personalised punishment on violators, and sometimes kicking and overturning carts containing items for sale.
- The custodial deaths flag the failure to have guidelines to handle lockdown violations.

- **Cases filed** -Their offence would have only attracted Section 188 of IPC (for disobeying the time restrictions ordered by a public servant).
- But they were also booked under other Sections stating extortion by threat and criminal intimidation.
- It is well known that the police include 'intimidation' in the FIR solely to obtain an order of remand, as it is non-bailable.
- The inclusion of non-bailable sections for a lockdown violation indicates a prior inclination to harass the two and cause suffering.
- **Larger concern** - If ultimately established as custodial murder, it would only mean that the problem is much deeper.
- The issue goes beyond mere lack of professionalism in investigative methods.

5.10 Custodial Torture - Existing Provisions

What is the issue?

- The 'Custodial death' of a father and son in Sathankulam town in Tamil Nadu's Thoothukudi district gave way to demands for separate law against torture.
- In this context, it is essential to look into how implementing the existing laws and recommendations of various commissions would help.

What are the provisions in place?

- **IPC** - Torture is not defined in the Indian Penal Code.
- However, the definitions of 'hurt' and 'grievous hurt' are clearly laid down.
- The definition of 'hurt' does not include mental torture.
- But, Indian courts have included among others, in the ambit of torture -
    i. psychic torture
    ii. environmental coercion
    iii. tiring interrogative prolixity (excessive wordiness)
    iv. overbearing and intimidatory methods
- Voluntarily causing hurt and grievous hurt to extort confession are also provided in the Code with enhanced punishment.
- **CrPC** - Under the Code of Criminal Procedure, a judicial magistrate inquires into every custodial death.
- **NHRC** - The National Human Rights Commission has laid down specific guidelines for conducting autopsy under the eyes of the camera.
- **SC Judgements** - The Supreme Court judgment in DK Basu v. State of West Bengal was a turning point in matters of custodial torture.
- The Court's decision in Nilabati Behera v. State of Orissa is also notable.
- It ensured that the state could no longer escape liability in public law and had to be compelled to pay compensation.
- Therefore, there is neither a dearth of precedents nor any deficiency in the existing law.
- It is not the law per se but the improper implementation that fails to deter incidents of custodial torture.

What is the DK Basu judgements about?

- A letter was received in 1986 from an organization regarding the matter of lock up deaths in the state of West Bengal.

- This letter was treated as a writ petition and taken as a PIL.
- It spawned four crucial and comprehensive judgments - in 1996, twice in 2001 and in 2015 - laying down over 20 commandments.
- Additionally, it led to at least 5 other procedural, monitoring and coordinating judicial orders.
- These have created a valuable and seamless web of legal principles and techniques.
- All of them are aimed at reducing custodial death and torture and to have control on police and a set of guidelines for arresting a person.

What are the drawbacks in the Prevention of Torture Bill?

- A fresh draft of the Prevention of Torture Bill was released in 2017 for seeking suggestions from various stakeholders.
- The Bill was vague as well as very harsh for the police to discharge its responsibilities without fear of prosecution and persecution.
- It was inconsistent with the existing provisions of law.
- It included 'severe or prolonged pain or suffering' as a form of torture but that was left undefined.
- The proposed quantum of punishment was too harsh.
- The 262nd Law Commission Report recommended that the death penalty be abolished except in cases of 'terrorism-related offences.'
- Despite this, the Bill provided for the death penalty for custodial deaths.
- Most countries have deleted or are deleting the death penalty from their statute books.
- But India is on path to enact fresh legislation with death penalty as the ultimate form of punishment.
- The Bill also makes the registration of every complaint of torture as an FIR.
- There is a blanket denial of anticipatory bail to an accused public servant.
- This seems less reasonable.
- The bail can be refused in appropriate cases.
- But, excluding an investigating officer from availing such an opportunity shall amount to putting him/her on the highest pedestal of mistrust.
- Overall, the proposed Bill was less reformative and more vague, harsh and retributive in nature.

What about the UN CAT?

- In 2017, the Central government admitted in the Supreme Court that it was seriously considering the 273rd Report of the Law Commission (LC).
- The LC recommended ratification of the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment (CAT).
- CAT was signed by India, but is yet to be ratified.
- However, except for minor discrepancies, the prevalent law in India is adequate and well in tune with the provisions of CAT.

What is to be done?

- There is first the need to implement the existing laws and provision in its true spirit.
- A 1985 Law Commission report directed enactment of section 114-B into the Evidence Act.

- This gave way for raising a rebuttable presumption of culpability (guilty) against the police if anyone in their custody dies or is found with torture.
- This has still not become law, despite a bill introduced as late as 2017. This should be processed soon.
- More importantly, monitoring and implementation of DK Basu judgements is the need of the hour.
- This should be taken up by independent and balanced civil society individuals at each level, under court supervision.
- The investigations and the prosecutions are not fair; these must be rectified first. There is also the need to make better the police training.
- The temptation to use third-degree methods must be replaced with scientific skills.
- Thus, the need of the hour is to strike at the root cause of the problem and implement recommendations of various commissions to bring in necessary reforms.

5.11 Encounter in Hyderabad Rape-Murder Case

Why in news?

- The four accused in the Hyderabad veterinarian rape case were killed by the Cyberabad police.
- Here is what the National Human Rights Commission (NHRC) and the Supreme Court have said on the procedures to be followed in extra-judicial or "encounter" killings.

When are extra-judicial killings permissible?

- The following are the observations made by Justice Venkatachaliah, who was Chief Justice of India in 1993-94.
- Under Indian laws, the police have not been conferred any right to take away the life of another person.
- If, by his act, the policeman kills a person, he commits the offence of culpable homicide unless it is proved that such killing was not an offence under the law.
- This remains the case whether it amounts to the offence of murder or not.
- The only two circumstances in which such killing would not constitute an offence are -
    1. if death is caused in the exercise of the right of private defence
    2. under Section 46 of the CrPC
- Section 46 "authorises the police to use force, extending up to the causing of death, as may be necessary to arrest the person accused of an offence punishable with death or imprisonment for life".
- In this regard, the NHRC asked all states and UTs to ensure that police follow a set of guidelines in cases where death is caused in police encounters.

What are the NHRC's guidelines on this?

- When the in-charge of a Police Station receives information about the deaths in an encounter between the Police party and others, s/he shall enter that information in the appropriate register.
- Information as received shall be regarded as sufficient to suspect the commission of a cognizable offence.
- Immediate steps should be taken to investigate the facts and circumstances leading to the death.
- This should ascertain what, if any, offence was committed and by whom.
- The police officers belonging to the same Police Station are the members of the encounter party.
- So, appropriately, the cases are made over for investigation to some other independent investigation agency, such as State CID.

- Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction.
- However, the NHRC finds that most of the States are not following the recommendations issued by it in the true spirit.
- Thereafter, the NHRC expanded the guidelines, adding several new procedures as the following:
- An FIR must be registered under IPC if a complaint is received against the police, alleging commission of a criminal act amounting to a cognisable case of culpable homicide.
- A magisterial enquiry must be held in all cases of death which occurs in the course of police action, as expeditiously as possible, preferably within 3 months.
- All cases of deaths in police action in the states shall be reported to the Commission.
- The Senior Superintendent of Police/Superintendent of Police of the District should report in a given format within 48 hours of such death.
- A second report must be sent in all cases to the Commission within 3 months.
- This should provide information including post mortem report, inquest report, findings of the magisterial enquiry/enquiry by senior officers.

What are the directions by the Supreme Court?

- The Court had, in 2014, issued a detailed 16-point procedure to be followed in the matters of investigating police encounters in the cases of death.
- This was to be followed as the standard procedure for thorough, effective and independent investigation.
- Some of these directives are as follows:
- If the police is in receipt of any intelligence regarding criminal movements or activities relating to grave criminal offence, it shall be written in some form (preferably into case diary) or in some electronic form.
- In regards with this, if encounter takes place and firearm used and death occurs, an FIR shall be registered.
- The FIR shall be forwarded to the court under Section 157 of the Code of Criminal Procedure without any delay.
- An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station.
- This should take place under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter).
- A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing.
- A report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.
- The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation.
- However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.
- These requirements should be treated as law declared under Article 141 of the Constitution of India.
- These must thus be strictly observed in all cases of death and grievous injury in police encounters.

What are the concerns in the present case?

- There is wide acceptance to the “encounter killings” to deliver swift retribution.

- Existing laws on sexual crimes and punishment need better application.
- But, a recourse to brutal retribution is no solution.
- The political sanction of "encounter killings" would only be a disincentive for the police to follow the due process of law.
- It may even deter them from pursuing the proper course of justice.
- Far from ensuring justice to the victims, bending the law in such cases would only undermine people's faith in the criminal justice system.
- Justice in any civilised society is not just about retribution, but also about deterrence, and in less serious crimes, rehabilitation of the offenders.

6. RACISM

6.1 Racial Unrest in the U.S

Why in news?

The United States is witnessing widespread protests against the recent death of George Floyd, a black man, by the action of police.

What led to the protests?

- Floyd, an unarmed black man, died in the hands of Minneapolis police.
- Derek Chauvin, the police officer filmed kneeling on Floyd's neck, was arrested soon after.
- He was charged with murder and manslaughter.
- Demonstrations erupted in cities across the U.S. in response to the death of George Floyd.
- Another such issue took place in 2014 with the shooting death of a black 18-year-old, Michael Brown, by a white police officer in Ferguson, Missouri.

How prevalent were the protests?

- The anger in response to Floyd's killing descended into rioting and looting in several cities.
- Protests have erupted in at least 140 cities across the U.S. in the days after Floyd's death.
- Violence spread overnight despite curfews in several major cities rocked by civil unrest in recent days.
- The sight of protesters flooding streets fuelled a sense of crisis in the U.S. after weeks of lockdowns due to the coronavirus pandemic.
- The closely packed crowds and many demonstrators not wearing masks sparked fears of a resurgence of COVID-19.
- Police fired rubber bullets and tear gas in many cities.
- In London too, hundreds of protesters took to Trafalgar Square chanting "no justice, no peace."
- A crowd descended on the U.S. Embassy in Berlin too, calling for the police officers to face justice.

What controversy did Trump trigger?

- Besides protests, President Donald Trump let himself into the controversy.
- He triggered a broader debate on censorship of posts by social media platforms.

- The Twitter masked and attached a caution note to a tweet by Mr. Trump for "glorifying violence".
- In the tweet, he had labelled protesters calling for action against police for Floyd's death "THUGS".
- He added, "when the looting starts, the shooting starts."
- [This comes as a reference to a threat by a police chief, who in 1967 declared "war" and vowed violent revenge on African-Americans in Miami Beach.]
- This is hardly the first time that the U.S. President has spread messages of hatred.
- He has said, among other things, that Mexicans were rapists and drug dealers.
- In early 2017, he banned visitors from certain Muslim-majority countries.

What does this demand?

- The situation calls for far-reaching legislative reforms on -
  i. the use of excessive force by police against minorities
  ii. punishment for all hate crimes
  iii. workplace discrimination
  iv. inhumane treatment of migrants at the border
- Such an agenda, focused on the complete reform of government institutions toward supporting a pluralist ethos is crucial now.

6.2 Edward Colston

Why in news?

As anti-racism protests spread across Europe, after the killing of black man George Floyd in the USA, the protestors attack their own local brand of racism.

What happened?

- In the English port city of Bristol, demonstrators pulled down a 125-year-old statue of 17th century slave trader Edward Colston.
- They dragged it through the city's streets into the harbour of river Avon.
- This incident has caused a stir in the city, with residents divided over his exact role in history.
- Some would like to remember him as a philanthropist who devoted his fortunes to the development and prosperity of Bristol.
- Others are wary of the exploitative nature of his work that brought in the same above fortunes.

What is the petition?

- A petition seeking a reassessment of Colston's contribution to the city of Bristol has been doing the rounds for the last three years.
- A petition asking for the removal of his statue from the city centre read that the people who benefited from the enslavement of individuals do not deserve the honour of a statue.

Who is Edward Colston?

- Colston was born in 1636 to a merchant family that had been living in Bristol since the 14th century.
- While he grew up in Bristol until the English Civil War of 1642-51, his family later moved to London, where Colston began his professional life.
- At the initial stage of his career, Colston was involved in the trading of cloth, oil, wine, fruits with Spain, Portugal, Italy and Africa.

- In 1680, he joined the Royal African Company (RAC), which had a monopoly in England on the trade of gold, silver, ivory, and slaves, along the west coast of Africa.

Why is Edward Colston seen as a racist?

- The RAC was established by King Charles II along with his brother James, the Duke of York.
- The ships of the Company enjoyed the protection of the Royal Navy, and the traders made good profits.
- Many of the enslaved Africans were branded with the initials 'DY', standing for Duke of York.
- They were shipped to Caribbean islands to work on the new sugar plantations, as well as further north to England's American colonies.
- Colston rose up to the company's board, taking on the position of Deputy Governor in 1689.
- During the period of his involvement with RAC till 1692, the company is believed to have transported about 84,000 slaves.

Why is Edward Colston seen as a philanthropist?

- Bristol, Liverpool, Glasgow, and London were the key ports for British companies trafficking African slaves across the Atlantic.
- The merchants, shipbuilders, sailors involved in the trade were a major source of income and wealth for these cities.
- Colston was one such slave trade magnate.
- He funded many charitable projects in Bristol and London, including schools and almshouses for the poor of the city, thereby developing the reputation of a philanthropist.
- He briefly served as a Tory MP for Bristol before dying in Mortlake, Surrey, in 1721.
- In his day, he was revered by Bristol's corporation as the highest example of Christian liberality that this age has produced, both for extensiveness of his charities and the prudent regulation of them.
- His name is enshrined upon an independent school, a high rise building called Colston Tower, Colston Street, Colston Avenue, etc.

Who are the other figures targeted by anti-racism demonstrators?

- **Winston Churchill**: In central London, the statue of former British prime minister Winston Churchill was vandalised.
- The demonstrators reportedly wrote 'was a racist' on it.
- The wartime prime minister of the country was known for his 'indomitable spirit' among the British.
- But he has been accused by historians for his racist, imperial policies that led to the death of many in British India.
- **King Leopold**: In Belgium, demonstrators targeted the statues of the 19th century monarch King Leopold II.
- His administration of the Congo has been heavily criticised for the atrocities and exploitation it led to.
- The institutionalised brutality unleashed by Leopold in Congo is believed to have led to the death of about 10 million people.
- An online petition asking for the removal of his statues garnered 60,000 signatures.

7. LABOUR ISSUES

7.1 Assessing Centre's Relief to Construction Workers

Why in news?

The Centre recently directed the states to use the Rs 31,000 crore in 'Building and Construction Workers Welfare Fund' (BOCW) to provide relief to Construction Workers, amidst lockdown due to the coronavirus.

How effective will the move be?

- The aim is to provide assistance and support to the mostly casual workers (83.8% as per PLFS 2017-18) to protect them against economic disruptions.
- States collect a cess from construction projects, register construction workers, and design schemes to use the funds collected for their welfare.
- But states have not been very good at spending this money.
- The labour ministry had previously estimated that about Rs 52,000 crore was available with states.
- But, whatever the amount, this assistance is likely to be constrained in practice by -
    i. low worker registrations
    ii. limited capacity for expenditure
    iii. significant variations across states
    iv. issues of interstate migrants
- This will affect the ability of central and state governments to ensure wages to migrants, many of them construction workers.

What are the concerns?

- **Registration** - Only registered construction workers benefit from the welfare schemes.
- But the overall registration of workers itself has been unsatisfactory.
- Union Labour and Employment Ministry shows that 3.24 crore workers (estimated at 3.5 crore currently) were registered across the country as of end-2018.
- This represented about 60% of the construction workforce in India, as per PLFS 2017-18.
- Much of this progress is recent, after monitoring by the Supreme Court; registration increased by more than 50% between 2015 and 2018.
- Worryingly, field studies show that many workers remain unaware of the benefits.
- **Allocation** - Even for the limited subset of registered workers, the benefit would depend on the state in which they are registered.
- Because, there is wide variation in the availability of cess funds across states.
- In 2018, half of the collected cess amount was in just six states—Maharashtra, Karnataka, Delhi, TN, UP, MP.
- Conversely, some 6 states have 54% of the registered workforce, but only 32% of cess funds collected.
- These include TN, UP, MP, Odisha, Rajasthan and West Bengal.
- **Capacity to spend** - Thus, welfare boards in states have differing capacities to offer assistance.
- E.g. Chhattisgarh's board would go bankrupt if they paid workers even the central minimum daily NREGA wage of Rs 202 for the lockdown period.
- On the other hand, Maharashtra's board would have surplus funds.

- By 2018, just six states - UP, MP, Odisha, Rajasthan, West Bengal and Kerala - accounted for 53% of the cess money utilised.
- Very few states are in the category with large numbers of registered workers, and a substantial expenditure per worker.
- Chhattisgarh is one of them, but its construction activity is too low for sufficient cess collection.

Does the move address the migrant workers?

- As is widely known, many of the migrant workers made desperate attempts to walk long distances home after the lockdown.
- These migrant workers constitute 42.7% of the urban construction workforce (Census 2001).
- Many workers walking home told that they had little access to social security at work.
- Fieldwork from several states shows that boards are reluctant to register migrants, and registration processes are arduous.
- Thus, it is unclear if migrant workers can access the finance minister's offered benefits in time.

How to deal with it?

- The Centre can use the expertise of the Central Building and Other Construction Workers' Advisory Committee.
- They could play a proactive role in coordinating amongst states, especially sending and receiving migrants.
- It can facilitate sharing beneficiary lists and funds between these states, perhaps through interstate MoUs.
- This can be used in combination with ground-level targeting, involving civil society and employers.
- Such an approach would ensure that all workers get access to some minimum sustenance for the period of the lockdown.
- States' labour departments and welfare boards must do much more to implement the law.
- Much remains to be done to convey the benefits of registration, and to make it easily accessible.
- The quarantine camps for migrants are, ironically, an opportunity to disseminate information, and even register such workers.

7.2 Draft Social Security Code 2019

What is the issue?

- The third draft on the Social Security code of 2019 aimed to amalgamate, simplify and rationalise the relevant provisions of existing central labour laws.
- The code has fallen short of this stated aim.

What are the flaws?

- It merely clubs together existing schemes in the organised sector.
- It has avoided the ambiguities over the basic criteria for availing social security benefits such as the minimum number of employees in an organisation and length of service.
- The basic structural and conceptual flaws in the code are,
    1. No uniform definition of "social security".
    2. No central fund. The corpus is proposed to be split into numerous small funds creating a multiplicity of authorities and confusion.

3. It is unclear how the proposed dismantling of the existing and functional structures, such as the Employees' Provident Fund Organisation (EPFO) — is a better alternative.
4. No clear definition for the crucial categories such as workers, wages, principal-agent in a contractual situation; and "organised-unorganised" sectors.
5. This will continue to impede the extension of key social security benefits such as PF, gratuity, maternity benefits, and healthcare to all sections of workers.
6. There is no commitment from the government to contribute to the listed social security measures, even as the Code is clear about employee and employer contributions.

What is unclear?

- It is heartening to welcome aboard large sections of the workforce such as those working in taxi aggregate companies.
- But how exactly the government proposes to facilitate their **access to PF or medical care** is not clear.
- In these cases, the **nature of the relationship** between the company and the working staff, and hence the obligations, is not defined.
- If employers in the unorganised sectors are expected to foot the bill for EPFO contributions, it will substantially hike the cost of doing business.

What is a failed examples?

- Existing benefits for unorganised workers have failed to materialise for similar reasons.
- For instance, the 22 years-old Building and Construction Workers' Cess Fund's failed to register the construction workers.
- So, they haven't been able to avail of the fund effectively.
- The Fund has less than 3 crore workers registered, with all the State welfare boards put together.
- Official estimates - Over 5 crore construction workers.
- Unions' estimate - Over 10 crore construction workers.
- It is a similar situation for almost all other welfare schemes run for the unorganised workers by the Central or State governments.
- **Problem** - The draft Code merely clubs the relevant sections of the existing statute without specifying how these issues are to be addressed.
- **Solution** - The government should address the long-pending structural issues and should actually simplify the existing labour laws.

7.3 Relaxing Labour Laws

What is the issue?

- Some state governments have recently decided to make significant changes in the application of labour laws.
- While these changes are reportedly being brought about to incentivise economic activity after the lockdown, there are lot many wider concerns.

What are Indian labour laws?

- Estimates vary but there are over 200 state laws and close to 50 central laws on matters of labour.
- However, there is no set definition of "labour laws" in the country.
- Broadly speaking, they can be divided into four categories (as in the figure below).

- The Factories Act aimed at ensuring safety measures on factory premises, and promoting health and welfare of workers
- The Shops and Commercial Establishments Act aims to regulate work hours, payment, overtime, weekly day off and other holidays with pay.
- It also regulates annual leave, employment of children and young persons, and employment of women.
- The Minimum Wages Act covers more workers than any other labour legislation.
- The most contentious labour law, however, is the Industrial Disputes Act, 1947.
- It relates to terms of service such as layoff, retrenchment, and closure of industrial enterprises and strikes and lockouts.

What are the concerns?

- Indian labour laws are often characterised as "inflexible".
- Due to the strict legal requirements, firms (those employing more than 100 workers) are wary of hiring new workers.
- This is because firing them requires government approvals.
- So, even the organised sector is increasingly employing workers without formal contracts.
- This, in turn, has constrained the growth of firms on the one hand and provided a less favourable deal to workers on the other.
- Also, there are too many laws, often unnecessarily complicated, and not effectively implemented.
- This has laid the foundation for corruption and rent-seeking.
- [With fewer and easier-to-follow labour laws, firms would be able to expand and contract depending on the market conditions.
- Also, the resulting formalisation would help workers, as they would get better salaries and social security benefits.
- At present, 90% of India's workers are part of the informal economy.]

What are the likely implications of states' decisions?

- UP, for instance, has summarily suspended almost all labour laws including the Minimum Wages Act.
- This is something like creating an enabling environment for exploitation.
- For instance, a firm could fire all existing employees and hire them again at lower wages, and no law would stop them from doing so.
- Moreover, this move will in one go turn the existing formal workers into informal workers as they would not get any social security.
- This would bring down the wage rate sharply, and the workers will have no way to even seek grievance redressal.
- Notably, even before the Covid-19 crisis, given the deceleration in the economy, wage growth had been moderating.
- Moreover, there was always a wide gap between formal and informal wage rates.
- E.g. a woman working as a casual labourer in rural India earns just 20% of what a man earns in an urban formal setting

Will the changes boost economic growth?

- Theoretically, it is possible to generate more employment in a market with fewer labour regulations.
- But the experience of states that have relaxed labour laws in the past suggests other way.
- Dismantling worker protection laws have failed to attract investments and increase employment.
- Employment will not increase primarily because there is already too much unused capacity.
- Firms are shaving off salaries up to 40% and making job cuts.
- The overall demand has fallen and so, firms are not likely to hire more employees right now.
- The work-hours move and the resulting fall in wages will only further depress the overall demand in the economy.
- It would hurt the economic recovery process too.

7.4 COVID-19 & Workers' Rights

What is the issue?

- Due to the Covid-19 crisis, the workers have been abandoned by their employers and by the state tragically.
- Labour laws are civilisational goals and cannot be trumped on the excuse of a pandemic.

How the worker's rights were curbed?

- The workers' right to go home was curbed using the Disaster Management Act, 2005.
- No provisions were made for their food, shelter, or medical relief.
- Wage payments were not ensured, and the state's cash and food relief did not cover most workers.
- Several workers started walking back home and many died on the way.
- More than a month later, the Centre issued orders permitting their return to their home States.
- Immediately employer organisations lobbied to prevent the workers from leaving.
- Governments responded by delaying travel facilities for the workers to ensure uninterrupted supply of labour for employers.

What do employers need now?

- Employers now want labour laws to be relaxed.
- Several States have exempted industries from complying with various provisions of laws.
- The Confederation of Indian Industry (CII) has suggested **12-hour** work shifts.
- It also wants the governments to issue directions to make workers join duty failing which the workers would face **penal actions**.
- This will take away the protection conferred on organised labour by Parliament.

What is the similarity with the colonial exploitation?

- The move is reminiscent of the system of **indentured labour** introduced through the Bengal Regulations VII, 1819 for the British planters in Assam tea estates.
- Workers had to work under a five-year contract and desertion was made punishable.
- **Factory workers** too faced severe exploitation and were made to work 16-hour days for a pittance.
- Their protests led to the Factories Act of 1911, which introduced 12-hour work shifts.
- Yet, the low wages, arbitrary wage cuts and other harsh conditions forced workers into 'debt slavery'.

How did the Indian labour laws emerge?

- The labour laws in India have emerged out of workers' struggles, which were part of freedom movement against colonial industrialists.
- Our political leaders supported the demands of the workers.
- Britain was forced to appoint the Royal Commission on Labour, which gave a report in 1935.
- The Government of India Act, 1935 enabled greater representation of Indians in law making.
- This resulted in reforms, which are forerunners to the present labour enactments.
- The indentured plantation labour saw relief in the form of the Plantations Labour Act, 1951.

How was dignity achieved through democracy?

- By a democratic process, Parliament stepped in to protect labour.
- **Factories Act, 1948** lays down 8-hour work shifts, with overtime wages, weekly offs, leave with wages and measures for health, hygiene and safety.
- **Industrial Disputes Act, 1947** provides for workers participation to resolve disputes through negotiations so that strikes/lockouts, unjust retrenchments and dismissals are avoided.
- **Minimum Wages Act, 1948** ensures wages below which it is not possible to subsist.
- These enactments further the Directive Principles of State Policy.
- They also protect the right to life and the right against exploitation under Articles 21 and 23.
- **Trade unions** have played critical roles in transforming the life of a worker from that of servitude to one of dignity.
- In the scheme of socio-economic justice, the labour unions cannot be dispensed with.
- Any move to undo these laws will push the workers a century backwards.

What are some exemptions?

- Section 5 of Factories Act empowers the State governments to exempt only in case of a "public emergency".
- Public emergency is a grave emergency whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.
- There is no such threat to the security of India now.
- Hours of work or holidays can't be exempted even for public institutions.
- Section 36B of the Industrial Disputes Act enables exemption for a government industry only if provisions exist for investigations and settlements.

Can a State government nullify Central enactments?

- Labour is a **concurrent subject** in the Constitution and most pieces of labour legislation are Central enactments.
- The U.P. government has said that labour laws will not apply for the next three years.
- Even laws to protect basic human rights have been suspended.
- The Constitution does **not envisage approval by the President** of a State Ordinance.
- This makes parliamentary laws inoperable in the absence of corresponding legislations on the same subject.
- Almost all labour contracts are now governed by statutes, settlements or adjudicated awards arrived through democratic processes.
- These processes accord the labour with procedural equality, which ensures progress of a nation.

- **LIC vs D.J. Bahadur &Ors (1980)** - The Supreme Court said that any changes in the conditions of service can be only through a democratic process of negotiations or legislation.
- It rejected the Central government's attempt to unilaterally deny bonus.

7.5 International Labour Standards

Why in news?

In the International Labour Organization's (ILO's) 101-year history for the first time, a labour standard has been universally ratified.

What does this mean?

- This historic moment was made when the Kingdom of Tonga decided to outlaw the worst forms of child labour (Convention 182).
- **Convention 182** was adopted in international labour conference, 1999.
- It prohibits the sexual exploitation of children, trafficking, deployment in armed conflict and other conditions that compromise their overall well-being.
- It complements the ILO's efforts under the Minimum Age **Convention 138** of the year 1973.
- Convention 138 prevents the employment of children below a lower age threshold.

International Labour Organization

- The ILO was created in 1919 by the Versailles Peace Treaty.
- After the demise of the League of Nations, it became the first specialized agency associated with the UN.
- Its secretariat is in Geneva, Switzerland.
- It has 187 of the 193 UN member states plus the Cook Islands.
- It is responsible for drawing up and overseeing international labour standards.
- It has a tripartite governing structure – representing governments, employers, and workers.
- It publishes Global Wage report.

When did India ratify?

- In 2017, India ratified the Convention 182 and Convention 138.
- This move has signalled its legal commitment to the elimination of child labour.

What is the influence of these ILO conventions?

- Under the influence of both these ILO standards, millions of young children have been rescued from hazardous conditions of work.
- In turn, these have resulted in significant increases in enrolments in primary education.
- However, the landmark ratification does not detract from the enormity of the challenge that remains.

What are the challenges?

- An estimated 152 million are trapped in child labour and 72 million of them are engaged in hazardous work.
- The current efforts would have to be stepped up significantly to achieve the goal of total abolition of the scourge of child labour by 2025.
- But the COVID-19 pandemic is threatening a reversal of recent gains.
- There are widespread job losses, deterioration in conditions of work, decline in household incomes and temporary school closures.

Eight Core Conventions of the ILO

1. Forced Labour Convention (No. 29)
2. Abolition of Forced Labour Convention (No.105)
3. Equal Remuneration Convention (No.100)
4. Discrimination (Employment Occupation) Convention (No.111)
5. Minimum Age Convention (No.138)
6. Worst forms of Child Labour Convention (No.182)
7. Freedom of Association and Protection of Right to Organised Convention (No.87)
8. Right to Organise and Collective Bargaining Convention (No.98)

What are these Conventions part of?

- The two instruments on child labour are among the eight core ILO Conventions.
- These eight conventions are regarded as embodying the spirit of the 1998 declaration on fundamental principles and rights at work.
- Instruments relating to the freedom of association and the elimination of discrimination in employment and occupation are among the others.
- They provide the framework to counteract the predominance of informality in the conditions of work.
- They should be a priority for governments.

8. POPULATION AND MIGRATION

8.1 Census-NPR Postponement

Why in News?

The Centre has decided to postpone the first phase of the 2021 Census, earlier planned to start on 1st April 2020, due to the COVID-19 outbreak.

What is the current situation?

- The 21-day national lockdown ccalled by Prime Minister Narendra Modi is until April 15.
- But the return of any semblance of normalcy in daily life will take many more weeks, if not months.
- India is still struggling to make sense of the extent and intensity of the pandemic and the accompanying and inevitable economic calamity.
- It is certain that all resources will need to be mobilised, first for combating the malady and then for tending society and the economy back to its health and dynamism.

What was the original schedule?

- According to the original schedule, there were two phases,
    a) 1st phase (April to September 2020) - House listing and updating of the National Population Register, and
    b) 2nd phase (February 2021) - Population enumeration.
- As the Census is a massive exercise, which involves mass contact and diversion of resources, the Centre has postponed it.

What does this suspension mean?

- As the Centre has put off the first phase until further orders, the State governments can now focus on the pressing task of combating the coronavirus.
- This suspension opens a fresh window, and an entirely new context, for reconciliation between the Centre and States on the exercise itself.
- The NPR exercise and the allied questions regarding citizenship rights had turned India into a cauldron of discord.
- But, the pandemic has forced the collective attention of the country on the interconnectedness of modern life.

Why did the State governments oppose?

- Several State governments had made their opposition clear to the Citizenship (Amendment) Act, 2019.

- They also made their opposition to the additional questions in the NPR pro forma that many fear is a prelude to something more cynical and divisive that is based on some quaint ideas of nationhood.
- The Centre clarified that people could choose not to respond to these questions, but never bothered to address the underlying concerns.

What could the Centre do?

- The Centre can turn this crisis into an opportunity to restore mutually respectful terms for relations with States and harmony among communities — both currently frayed.
- Unshakeable national unity is essential for the country to tide over the pandemic crisis.
- The Centre must use this sobering backdrop to analyse India's priorities as a country and revisit its idea of citizenship and plans for the NPR.

8.2 Supreme Court on Migrants Issue

Why in news?

Taking suo motu cognisance of the plight of the migrant workers, the Supreme Court ordered the Centre and the States to immediately provide transport, food and shelter free of cost to those stranded.

What are the observations made?

- A three-judge Bench has initiated suo motu proceedings based on media reports and representations from senior advocates on the issue.
- The court admitted that the migrants' crisis is even continuing today, since the Centre announced a lockdown, with just 4 hours' notice.
- Large sections of migrant labourers are still stranded on roads, highways, railway stations and State borders.
- The Government of India and the State governments have taken measures.
- But there have been inadequacies and certain lapses.
- Effective concentrated efforts are required to redeem the situation.

What was the court's earlier stance?

- The court could have done this 7 or 8 week earlier, when petitions were filed before the top court.
- But back then, the Court had accepted the government's sweeping claims.
- The Centre had then maintained that there were no migrants on the roads any more.
- It said that the initial exodus of workers from cities to their home States had been set off by "fake news".
- With limited intervention, the Court had then merely advised the police to treat the workers on the roads with kindness.
- It also directed the media to highlight the Centre's version of the developments.

8.3 Improving the Migrant Workers' Condition

What is the issue?

- After a stressful lockdown period, migrant workers have returned to their villages.
- Many have said they wish to stay there and no longer yearn to go back to their work in the cities.

Why do they say so?

- This is understandable given their terrible living conditions in the cities and the shocking treatment meted out to them during lockdown.

- This is an opportunity for those who work for workers security, for those in the cooperative movement, etc to enable the migrant workers to fulfil their desire of staying at home.

What could the migrant workers do?

- Back home, the migrants can form **cooperative societies**. So can MGNREGA workers.
- Many migrant workers said they worked as tailors, plumbers, cooks, and construction workers in the cities. All of them can form cooperatives.

What will be the purpose of these cooperatives?

- These cooperative societies could start developing their services or products that can be sold with better terms and conditions.
- Many government agencies are mandated to help build cooperative societies.
- There are also cooperative banks to help such societies.
- With large national institutions enabling such cooperative societies, groups of migrant workers can find institutional strength.

What could seasonal workers or those without a local market do?

- Those whose skills or products do not have enough marketing in a local area can re-enter the city as **labour cooperatives**, or even unions.
- These unions could have demands that they get housing and other support systems that help them have a decent living, not only a wage.
- Many workers are engaged in seasonal work in cities.
- It is customary for such workers to provide their services and return to their villages.
- They too could get together to form **service cooperatives**.
- NGOs and cooperative federations, agencies such as the National Cooperative Union of India, and labour unions can intervene.

What are some examples?

- The AMUL project is a model of one kind.
- But there are other, lesser-known models which are not as sophisticated and fair in terms of wages and other terms as AMUL but still offer ideas for today.
- India has examples of putting-out work in several industries.
- It is a deeply exploitative system where the people on contractual work had poor salaries and no benefits.
- Cooperatives, on the other hand, can get the same process done without the middle man.

Why MGNREGA should be given a better shape?

- MGNREGA has been offered as a way of alleviating migrant workers' distress.
- But this is only a short term and vulnerable wage-earning occupation.
- Sites cannot be opened during the monsoon season.
- Also, at any given area, there may not be enough sites to engage many people.
- So another possibility is to give MGNREGA better shape so that its funds can be used to enable women or artisans to market their products.

What could the state do?

- This is a valuable opportunity for the state to build new kinds of **economic structures** in India.

- It could build a pyramid of **group economic activity** going from the rural areas through collective marketing to fill the demand from cities.
- In the present dispersed production model, lack of concern for the fair treatment of the workers is what that has been lacking.
- **Successful unionisation** of workers can protect them from exploitation.
- This is an opportunity to rebuild economic production through different **institutional arrangements**.
- Arrangements that can provide an optimal solution to the workers as well as contribute to the GDP must be made.

9. EDUCATION

9.1 New Education Policy 2020

Why in news?

The Union Cabinet cleared a new National Education Policy (NEP) 2020.

What purpose does an NEP serve?

- **Purpose** - An NEP is a comprehensive framework to guide the development of education in the country.
- In 1964, Kothari Commission was constituted to draft a national and coordinated policy on education.
- Based on the suggestions of this Commission, Parliament passed the first NEP in 1968.
- **NEPs till now** - In 1968, the first NEP came under the Prime Ministership of Indira Gandhi.
- In 1986, the second NEP came under Rajiv Gandhi (Revised in 1992).
- The third one is the NEP 2020 under Narendra Modi.

What are the key takeaways of NEP 2020?

- **Schooleducation** - The new NEP focuses on overhauling the curriculum and easier Board exams.
- It also focused on a reduction in the syllabus to retain core essentials and thrust on experiential learning and critical thinking.
- It pitches for a "5+3+3+4" design of school education in the place of a "10+2" structure.
- This design will be corresponding to age groups 3-8 years (foundational stage), 8-11 (preparatory), 11-14 (middle), and 14-18 (secondary).
- This brings early childhood education (pre-school education for children of ages 3 to 5) under the ambit of formal schooling.
- The mid-day meal programme will be extended to pre-school children.
- The NEP says students until Class 5 should be taught in their mother tongue or regional language.
- **Higher education** - The NEP proposes to open up Indian higher education to foreign universities.
- It proposes to dismantle the UGC and the All India Council for Technical Education (AICTE).
- It proposes to introduce a 4-year multidisciplinary UG programme with multiple exit options, and discontinuation of the M Phil programme.
- It also proposes phasing out of all institutions offering single streams.
- It says that all universities and colleges must aim to become multidisciplinary by 2040.

How will these reforms be implemented?

- The NEP only provides a broad direction and is not mandatory to follow.
- Since education is a concurrent subject, the reforms proposed can only be implemented collaboratively by the Centre and the states.
- The government has set a target of 2040 to implement the entire policy.
- The government plans to set up subject-wise committees with members from relevant ministries at both the central and state levels.
- These committees will help in developing implementation plans for each aspect of the NEP.
- Planning will be followed by a yearly joint review of progress against targets set.

What does the emphasis on mother tongue/regional language mean?

- Such an emphasis is not new: Most government schools in the country are doing this already.
- As for private schools, it is unlikely that they will be asked to change their medium of instruction.
- The provision on mother tongue as medium of instruction was not compulsory for states.
- As education is concurrent subject, the policy clearly states that kids will be taught in their mother tongue/regional language wherever possible.

What about the children of multilingual parents?

- The NEP said that the teachers will be encouraged to use a bilingual approach.
- This approach will help those students whose home language may be different from the medium of instruction.

How will the higher education be opened to foreign players?

- The document states universities from among the top 100 in the world will be able to set up campuses in India.
- But the document doesn't elaborate the parameters to define the top 100.
- The government may use the 'QS World University Rankings'.
- However, the HRD Ministry needs to bring in a new law that includes details of how foreign universities will operate in India.
- It is not clear if a new law would enthuse the best universities abroad to set up campuses in India.

How will the 4-year multidisciplinary bachelor's programme work?

- Under this proposed 4-year programme, students can exit,
    1. After one year with a certificate,
    2. After two years with a diploma, and
    3. After three years with a bachelor's degree.
- Four-year bachelor's programmes generally include a certain amount of research work.
- Therefore, the student will get deeper knowledge in the subject s/he decides to major in.
- After four years, a UG student could enter a research degree programme directly depending on how well s/he has performed.
- However, master's degree programmes will continue to function as they do, following which student may do a PhD.

What impact will doing away with the M Phil programme have?

- This would not affect the higher education trajectory at all.
- In normal course, after a master's degree a student can register for a PhD programme.
- This is the current practice almost all over the world.
- In most universities, M Phil was a middle research degree between a master's and a PhD.
- MPhil degrees have slowly been phased out in favour of a direct PhD programme.

9.2 Three-language Formula

Why in news?

Tamil Nadu has rejected the three-language formula advocated in the National Education Policy (NEP 2020).

What does this rejection reiterate?

- By rejecting, Tamil Nadu Chief Minister has only reiterated the State's unwavering position on an emotive and political issue.
- Tamil Nadu has a two-language policy that remains non-negotiable for almost the entire political class.
- This policy was implemented decades ago after a historic agitation against the imposition of Hindi.

Did the policy talk about any imposition?

- The policy said that no language will be imposed on any State.
- But, it has expectedly cut no ice with parties in Tamil Nadu, which have risen in near unison to oppose the proposal.
- Tamil Nadu Chief Minister appealed to the Prime Minister to allow States to follow their own language policy.
- In a State that resisted multiple attempts to impose Hindi since 1937, political parties are wary of any mandate to impart an additional language in schools.
- They fear this would eventually pave the way for Hindi to enter the State through the back door.
- Since 1985, the State has even refused to allow Jawahar Navodaya Vidyalayas to be set up as they teach Hindi.

What is the effectiveness of the two-language policy?

- The two-language policy of Tamil and English was piloted by former Chief Minister C.N. Annadurai in 1968.
- It has thus far worked well in the State.
- In a liberalised world, more windows to the world are being opened up for those proficient in English, a global link language.
- The State's significant human resources contribution to the IT sector is attributed to its recruits' English fluency as much as to their technical knowledge.
- There is an argument that Tamil Nadu is depriving students of an opportunity to learn Hindi, touted as a national link language.

What is the reality?

- The State's voluntary learning has never been restricted.
- The growth over the past decade in the number of CBSE schools, where the language is taught, would bear testimony to this.
- The patronage for the 102-year-old Dakshina Bharat Hindi Prachar Sabha, based in Chennai, also proves this.
- In the Sabha's centenary year, Tamil Nadu accounted for 73% of active Hindi pracharaks (teachers) in South India.

- Out of necessity, many in the State have picked up conversational Hindi to engage with the migrant population.
- Only compulsion is met with resistance.
- India's federal nature and diversity demand that no regional language is given supremacy over another.

9.3 Delhi Model of Education

What is the issue?

- The Delhi model of education has caught the attention of people in Delhi and beyond in the last five years.
- The validation of this model now creates a pathway for the next set of reforms.

Why the Delhi model is a success?

- For too long, there have been two kinds of education models in the country: one for the classes and another for the masses.
- The Delhi government sought to bridge this gap. Its approach stems from the belief that quality education is a necessity, not a luxury.
- Hence, it built a model which essentially has five major components and is supported by nearly 25% of the State Budget.

What are the key components of the model?

- **Transformation of school infrastructure** - Dilapidated school buildings that lack basic facilities indicate the apathy of the government.
- It will also lower the teachers' motivation and the students' enthusiasm.
- So, the government of Delhi sought to change this by building new, aesthetically designed classrooms equipped with high facilities.
- **Training of teachers and principals** - Many opportunities were given to teachers for their professional growth.
- They had been exposed to new education models of excellence in India and abroad and, also had been given leadership training.
- This enabled Delhi to gradually move away from a uniform training model for all to learning from the best practices in India and abroad.
- **Engaging with communityby reconstituting SMC** - The annual budget of each school management committees (SMC) is ₹ 5-7 lakh.
- The SMCs can spend this money on any material or activity, such as even hiring teachers on a short-term basis.
- Regular dialogue between teachers and parents was initiated through mega parent-teacher meetings.
- Guidelines are provided on how to engage with parents.
- **Curricular reforms in teaching learning** - Special initiatives to ensure that all children learn to read, write and do basic maths was made part of regular teaching learning activities in schools.
- A 'happiness curriculum' was introduced for all children between nursery and Class 8 for their emotional well-being.
- An 'entrepreneurship mindset curriculum' was introduced to develop the problem-solving and critical thinking abilities of Class 9 to 12 children.
- Apart from these new curricular initiatives, the focus on existing subjects ensured better performance in Board examinations by Classes 10 and 12.

- **No fee increase in private schools recently** - In the past, almost all the schools increased their fee 8-15% annually.
- The Delhi government ensured that any fee hike proposal was examined by authorised chartered accountants.
- Thus, for 2 years no school was allowed to raise its fee.

What is the Agenda 2.0?

- Manish Sisodia, the leader of the Delhi education models said that there will be a shift in focus now.
- It will shift from "having built the foundation of education" to "education as foundation".
- Going forward, there will be three key areas of reform apart from consolidating the gains of the past.

What will be the Agenda 2.0's key areas of reform?

- **Reviewing the Classes 1 to 8 syllabus** - This review will emphasise the foundational learning skills, the 'happiness curriculum' and the 'deshbhakti' curriculum.
- Apart from that, early childhood care and education will be deepened further through Anganwadis. There will be nurseries in all govt schools.
- **Setting up a Delhi Education Board** - This will promote a learning that encourages critical thinking, problem solving and application of knowledge among children.
- This will prepare them to tackle the challenges of the 21st century with an entrepreneurial mindset.
- For those who have graduated from Delhi schools in the recent past, programmes will be initiated to raise their employability opportunities.
- **Creating specialisedschools** - These schools will be created in each of the 29 zones of Delhi to nurture the aptitude and talent of children in the areas of science and technology, literature and language, etc.
- Delhi has acknowledged education as a top agenda of governance now.
- So, the natural expectation from it would be to ensure that all children get education that passes the test of quality, opportunity and equity.

9.4 NEET Data from Tamil Nadu

What is the issue?

- A data from Tamil Nadu government on NEET pass percentages recently became available through the Madras High Court.
- While the NEET puts the poor at a disadvantage, the focus must be on quality of school education.

What are the highlight findings?

- A total of 3,081 candidates got admitted in MBBS course in 23 government medical colleges in Tamil Nadu in 2019.
- As many as 1,040 of those candidates cleared NEET in the first attempt.
- A majority of 2,041 cleared it either in the second or third attempt.
- Of the total, only 48 candidates had not attended any coaching centre.
- Only 1.6 % of all students who joined the government medical colleges had managed to get a seat without coaching.
- Significantly, even in private medical colleges, only a marginally higher percentage (3.2) had got through without coaching classes.
- A significant percentage of students in both government (66.2) and private colleges (64.4) had to take multiple attempts at NEET to get a seat.

What does the data imply?

- The data shows a clear link between coaching classes and securing a medical seat.
- As observed by the Court, the data on medical admissions proves NEET to be anti-poor.
- The costs of coaching classes are huge, running into lakhs of rupees.
- It clearly puts medical education out of the reach of the poorer sections as well as students from rural areas.

What should the response be?

- With the poor being at disadvantageous position, there are calls to cancel the NEET.
- The fundamental question, however, is the quality of education being imparted to students, in urban and rural areas.
- Ensuring that quality education is imparted at schools by well-trained teachers would obviate the need for coaching outside of classes.
- The need now is for the States to put in place a series of steps that would make learning meaningful, and fun for children.
- In the interim, it should provide free NEET coaching classes to help disadvantaged students make that leap.

9.5 Over-centralisation in Education - NEET

What is the issue?

- The NEET (National Eligibility-cum-Entrance Test) for medical courses is becoming a sign of over-centralisation in education.
- The interests of democracy call for arresting the trend towards the governmental domination of the educational process.

What were the judicial pronouncements in this regard?

- NEET was initially struck down as unconstitutional in Christian Medical College, Vellore (2013) case by a 2:1 majority.
- In 2016, a review of this judgment was allowed.
- Also, the dissenting judge of the 2013 judgment made NEET compulsory even prior to a full hearing by the constitution Bench.
- In April 2020, the Supreme Court held that there was no fundamental right violation in prescribing NEET for medical courses admissions.
- The observations made by a Commission (1948-49) do not seem to have been kept in mind in the April 2020 judgment.
- [The Commission was appointed by the Government of India to report on Indian University Education and suggest improvements and extensions.]

What were the observations by the 1948-49 Commission?

- Freedom of individual development is the basis of democracy.
- Exclusive control of education by the government has been an important factor in facilitating the maintenance of totalitarian tyrannies.
- In such countries, institutions of higher learning controlled and managed by governmental agencies -
    i. act like mercenaries
    ii. promote the political purposes of the State

iii. make them acceptable to an increasing number of their populations

iv. supply them with the weapons they need

How does it work with NEET?

- In the case of education, over-centralisation is becoming a reality.
- NEET is much an assault on the autonomy of universities and higher education institutions, particularly private, unaided ones.
- In the name of state's power to "regulate", the rights of unaided private institutions and minority institutions cannot be violated.

How disadvantaged do students become?

- With NEET and other similar national tests such as the JEE and CLAT, coaching institutes are prospering.
- Since most of them are in cities, poorer students from a rural background face a disadvantage.
- The case is similar with students who have studied in the vernacular medium.
- There is also large-scale variation in the syllabus and standards of the Central Board of Secondary Education and State boards.
- Besides, the NEET paper was leaked twice in the last four years.
- Therefore, there is not much confidence in NEET's fairness and transparency.
- Also, there is the issue of wrong translation.
- In the 2018 NEET, as many as 49 questions had errors in Tamil translation.
- [This led to a Madras High Court order to award 4 marks for each of the 49 wrongly translated questions to all 1.07 lakh candidates of the state.
- The Supreme Court overruled this order as the HC had arbitrarily ordered for grace marks to everyone.
- It did not examine whether the student even attempted such a question.]
- However, the advantages of NEET include a student having the possibility of giving multiple tests.
- By this, students would have a chance to qualify without losing a year, if they fail in one test.

Does NEET really promote merit?

- The ides of meritocracy requires competition and equality of opportunity.
- In the case of NEET, competition cannot be termed as fair and just, and the equality of opportunity becomes illusionary.
- Certainly, NEET and other such admission tests do not meet the fundamental criteria of meritocracy.
- It is unclear if NEET is adequately measuring the multidimensional construct of merit.
- Common admission tests fall short of measuring the abilities that are essential for learning such as imagination, curiosity and motivation.
- Empirical research in the U.S. on such tests reveals that these tests are biased against the poorer and underprivileged sections of population.
- Thus, there is also an element of 'class' in NEET, which the Indian judiciary has so far overlooked.

How important is differential treatment?

- Minority rights are not the violation of the equality provision in Article 14 as the Constitution does permit classification.
- In fact, substantive equality, as opposed to formal equality, mandates differential treatment.

- There are even hundreds of minority institutions of Hindus as linguistic minorities.
- The Court's opinion in Kerala Education Bill 1957 [1958], on minority rights, deserves mention.
- A crucial statement in the judgement observes that the key words in Article 30 are 'of their own choice.'
- It held 'choice' to be the dominant word.
- The then Chief Justice Das said that 'the content of the article is as wide as the choice of the particular minority can make it'.
- In the present case, a minority institution may want additional qualifications over and above the NEET score.
- In that case, denial of such additional and superior qualifications undermines its choice.
- Due to centralised counselling, several minority institutions and private medical colleges are unable to fill their seats.
- This is an encroachment of their rights.
- Moreover, every vacant seat is a national loss. COVID-19 has only demonstrated India's extremely poor doctor-population ratio.

9.6 Online Education - Constraints

What is the issue?

- Covid-19 and social distancing are likely to stay for a while.
- Given this, online education is not a transient phenomenon, and thus needs concerted efforts with a long-term view.

What are the technical limitations involved?

- With the onset of Covid, India's schools and colleges are functioning through online instruction.
- But digital deprivation remains high in India.
- Rural India has 22.7 crore active Internet users, slightly more than urban India's 20.5 crore.
- [According to a report by the Internet and Mobile Association of India (IAMAI) and Nielsen]
- India's smartphone penetration now stands at over 50 crore.
- This still leaves out half a billion people, a large category of have-nots, in an increasingly online-determined existence.
- The call to boycott Chinese brands could also impact smartphone affordability among the rural and urban poor.
- Moreover, online classes, being video content, require 4G reception.
- While data charges in India are low, most handsets being used by the poor in India are not 4G ready.
- India's mobile broadband is known for its poor quality, especially in rural areas.
- In fixed-line broadband penetration, India ranks among the lowest in the world with only 6% (of the total population).
- This is much low compared with 55% in China, 70% in the Eurozone and 80% in Japan.

What is the imminent risk?

- With education becoming inaccessible or hard to access, dropouts could increase for want of a laptop, smartphone or Internet connection.
- This could affect the more than a decade of gains made in school enrolment through schemes such as the Sarva Shiksha Abhiyaan and the mid-day meal programme.

- To prevent their children from leaving school, poor parents may sell precious assets.
- This might push them further into poverty.

9.7 Annual Status of Education Report 2019

Why in News?

The Annual Status of Education Report (ASER) 2019 data on early childhood education in rural areas was released recently.

What is the ASER report?

- ASER report is prepared by an NGO called Pratham.
- The ASER surveyors visited almost 37,000 children between 4 and 8 years in **26 rural districts** across 24 States.
- They asked each child to do a variety of tasks **testingcognitive skills** as well as **simple literacy and numeracy tests**.
- Social and emotional development was tracked through activities using cards with faces showing happiness, sadness, anger and fear.

What are the findings in the report?

- Only 16% of children in Class 1 in 26 surveyed rural districts can read text at the prescribed level while almost 40% can't even recognise letters.
- Only 41% of these children could recognise two digit numbers.
- Two-thirds of those in the Class 2 cannot read a text at age 7 that they were meant to read a year earlier.
- The performance only marginally improves for those in the Class 3. There are similar inadequacies for numeracy skills.
- Students appear to fare somewhat better in private schools with poorly paid teachers.

What does the data reveal?

- This data makes the case that the **pre-school system fails to give children a strong foundation**.
- This case is true especially in the government-run facilities.
- Going by the findings,
    1. The percentage of girls in government schools is higher than in private institutions,
    2. The cognitive skills of children attending official anganwadi playschools do not match those attending private schools, and
    3. There are a significant percentage of underage children in the first standard of formal school, in violation of the stipulated age of six.
- It is beyond question that children will be benefitted greatly if they are provided a properly designed environment to acquire cognitive skills.
- These skills are critical to their ability to verbalise, count, calculate and make comparisons.

What are the issues at policy-level?

- The ASER data seem to indicate that there is an apparent imbalance in State policies.
- This is disadvantaging the less affluent as anganwadis and government schools are poorly resourced.
- Official policies are also not strict about the age of entry, resulting in 4 and 5 year olds accounting for a quarter of government school enrolment, and over 15% in private schools.

What are the other problems?

- Nationally, the problem is of a weak educational foundation with little scope for creative learning in the 3-to-6 year age group.
- Another national problem is governmental system disinterested in giving children motivated, well-trained teachers.

9.8 Assessing the National Institutional Ranking Framework

What is the issue?

- The National Institutional Ranking Framework's (NIRF) rankings have become the big game in higher education.
- In this context, here is an assessment if the rankings are really working to fulfil the purpose or not.

What is the NIRF?

- The NIRF was approved by the MHRD (Ministry of Human Resource Development) and launched in 2015.
- The framework outlines a methodology to rank institutions across the country.
- The ranking framework evaluates institutions on five parameters:
    1. Teaching, Learning & Resources
    2. Research & Professional Practice (RP)
    3. Graduation Outcomes
    4. Outreach & Inclusivity (OI)
    5. Perception (PR)
- The number of participating higher educational institutions (HEI) has risen sharply.
- It has increased from 233 universities and 803 colleges in 2017 to 294 and 1659, respectively, in 2020.
- [There are about 1,000 universities and 40,000 colleges in India.]

What is a noteworthy trend?

- As seen globally, there is a predominance of STEM (Science, Technology, Engineering and Mathematics) in the top ranks.
- In the 'Overall' category, the score ranges from 42 to 85.
- But there are only 13 institutions with a score above 60.
- Moreover, IITs and the IISc make eight of these thirteen.
- In the 'University' category, the scores of top 100 range from 40 to 84.
- But an overwhelming 65 universities have a score below 50.
- Regional inequality, too, is glaring, and 42 of the top 100 universities are from 3 states: Tamil Nadu, Maharashtra and Karnataka.
- Similarly, 81 colleges in the top 100 are from Tamil Nadu, Delhi and Kerala.
- Worryingly, directing resources to the top rankers would only widen the gulf.

How rational and fair are the rankings?

- Rankings attempt to introduce competition between institutions operating in quasi-market environments.
- It is laudable that the government is generating a credible benchmark through the NIRF.
- It is also noteworthy that it is mostly based on objective indicators.

- The PR parameter, which is widely criticised in rankings literature as 'reputation', is given only a small weight of 10%.
- However, there are unintended consequences of measurement.
- The view that anything that can be measured and rewarded will be gamed cannot be denied totally.
- 'Teaching to the test' is one way in which institutions are distorted, attempting to achieve something in letter, ignoring the spirit.

How does the teaching parameter work on ground?

- There are differences between types of institutions in terms of their functions and objectives too.
- But the parameters and the assigned weights can distort the perception of agents.
- For example, the core function of colleges is to produce graduates with a strong base in their subjects.
- Hence, the NIRF assigns a higher weight for teaching in colleges.
- Still, colleges persuade teachers, who are inclined to teaching, to increasingly do research and publish for which they are ill-equipped.
- A 16-hour teaching load and the task of conducting all the programmes to score on various ranking parameters fall on teachers.
- Over and above this lies the maintenance of an MIS (Management information system).
- Faced by these constraints, teachers resort to low-quality research, and the mushrooming of predatory journals in India is the living proof for this.
- In this process, colleges end up compromising on something that is difficult to measure - teaching.
- According to education researchers, one major factor that helps students graduate is 'student engagement'.
- An important aspect of this engagement is the quality of contact with faculty.
- In fact, it is this aspect that enriches the career of a teacher too.
- This is severely affected in colleges due to the above said burden on teachers.
- Students will definitely benefit by studying in institutions where teachers are happy and their job satisfaction level is high.

What are the changes needed?

- It is certainly encouraging to see HEIs in India responding to the rankings framework.Given this response, the policymakers should innovate and modify the metrics suitably.
- Primarily, the metrics should include feedback from teachers.
- Secondly, the rankings on the basis of different parameters should be published.
- Although some data is available on the website, official publication of such rankings will help students make more informed decisions.
- Another issue is that the use of PhD as a measure of quality of faculty is fraught with serious drawbacks, for the quality of PhD varies a lot.
- A better indicator, at least for non-university categories, would be UGC-CSIR-NET.
- The NIRF should also increase the number of ranked institutions gradually as institutions are improving their scores.

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