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# MAINSTORMING 2021

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## MAINSTORMING 2021

### PAPER I BOOSTER

### (OCTOBER - NOVEMBER 2021)

#### 1. INDIAN HISTORY

##### 1.1 Mahatma Gandhi and V D Savarkar - Ideological Comparison

###### What is the issue?

The 1911 to 1947 paradigm of the Indian freedom struggle was primarily dominated by two individuals - Mahatma Gandhi and V D Savarkar (Veer - the braveheart). Here is an overview of their ideologies.

###### What is the ideological significance of the freedom struggle?

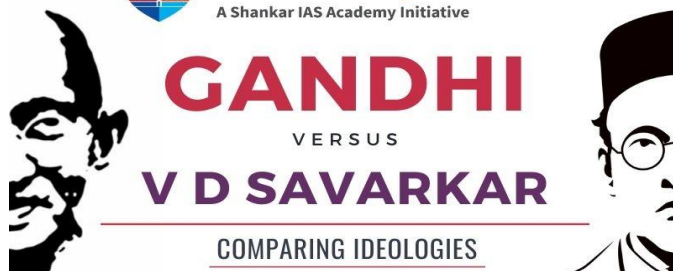
- Besides achieving independence, the freedom struggle also involved nurturing the ideas and values for nation-building.
- The Indian freedom struggle too consisted of different ideologies encompassing the right, left and centre.
- It was indeed a broad socio-economic, cultural movement with the participation of reformists, revolutionaries, constitutionalists, loyalists, progressives and even regressives.
- Besides the Gandhian stream of nation-making, the other parallel but equally forceful stream was the stream of revolutionaries.

###### What were the key contributions of Gandhi?

- "Fathered" many of the ideas that are the guiding principles for present-day Bharat.
- Made the freedom struggle a true "national" struggle.
- Promoted the idea of equality.
- Gave non-violence as a method to achieve independence by changing the heart of the oppressor.











###### What were the other key ideas of Savarkar?

- He evolved an enlightened view of Hinduism - Creating a strong national character by nurturing the individual with the cultural and ideological roots of Hindu culture.
- For his strong ideas and valour, Savarkar was charged with sedition, extradited and sentenced to transportation for two life terms, amounting to a 50-year sentence.
- After he was released with conditional confinement from the jail, Savarkar was engaged in a massive social reform project in Ratnagiri.



## GANDHI VERSUS V D SAVARKAR

### COMPARING IDEOLOGIES

 <h4>HINDU IDENTITY</h4> <p>More assertive; he described himself as a Sanatani Hindu and cow worshipper</p>	 <p>More progressive in his approach; he was averse to the ritualistic aspects of the Hindu religion</p>
 <h4>IDEAL STATE</h4> <p>Championed the cause of Ramrajya, which is an ideal state where equality and justice prevail</p>	 <p>A Hindu Rashtra in which anyone who is born in the motherland and loves his country is a Hindu irrespective of their religion. Hinduness was not sectarian or religious but a cultural identity</p>
 <h4>GOAL</h4> <p>Developed the idea of complete independence gradually. 1920 Non-Cooperation Movement - Dominion status. Opposed Nehru's proposal in 1927 on resolution for complete independence</p>	 <p>Clear and firm on the idea of 'complete independence'. In his work, The Indian War for Independence, he hailed 1857 as the first war of independence.</p>
 <h4>APPROACH</h4> <p>The end had to be justified through the means. Non-violence, satyagraha, "changing the mind of the oppressor" were essential.</p>	 <p>The goal (complete and immediate independence) was more important than the means. The means could be non-violent, fighting openly with the British and even aligning with their enemies.</p>
<div><h4>SIMILARITIES</h4></div> <ul style="list-style-type: none"><li>Both were born in traditional Hindu families. Studied law and were barristers.</li><li>Advocated for Hindi as a common language for the unification of Bharat.</li><li>Proactive social reformers - Opposed untouchability; Advocated Reforming Hinduism from within and eradicating caste-based differences.</li><li>Wrote extensively on contemporary political and social issues. Both wrote books in the same year, 1909: Gandhi - Hind Swaraj, Savarkar - The Indian War for Independence on the 1857 uprising.</li><li>Both men spent time in prison for their fight against the British Empire.<ul style="list-style-type: none"><li>From the inception of his civil rights movement in South Africa to the end of the Indian freedom movement in 1947, Gandhi served approximately 7 years in jail. He was mostly a political prisoner.</li><li>Savarkar, apart from minor arrests, served 13 years in Kala Paani in Andaman. His release was conditional.</li></ul></li></ul>	

- He worked to uproot the caste system, advocated inter-caste dining, inter-caste and inter-regional marriages, widow remarriage, female education and temple entry for all castes.
- Savarkar was totally against the idea of the bifurcation of India. He hailed the glorious past and culture of India to borrow strength from it.

## 1.2 Alexander and Chandragupta Maurya – The Great

### Why in news?

The use of the suffix 'great' has become uncommon in modern history-writing as historians have moved away from the political triumphs of rulers to the society, economy, art and architecture of their times.

### Who is Alexander?

- Alexander was born in 356 BC at Pella in ancient Greece, and succeeded his father, king Phillip II, to the throne at the age of 20.
- Over the next 10 years, Alexander led campaigns across large parts of West Asia and North Africa.
- In 327 BC, Alexander crossed the Indus, the farthest frontier of the old Persian empire, and began his Indian campaign that lasted about two years.
- The king of Taxila surrendered to Alexander, but beyond the Jhelum he was challenged by the legendary warrior Porus.
- In the **battle of Hydaspes**, Alexander won, but was impressed with Porus and returned his kingdom.
- Alexander wished to march towards Gangetic basin but upon reaching the Beas, his generals refused to go further.
- Alexander was forced to turn back and died in the ancient city of Babylon, to the south of today's Baghdad.

### Why is Alexander called to be the great?

- Alexander came to be called 'great' because of his excellent military conquests which amazed the European writers and chroniclers.
- He had established the largest empire the world had seen until then, which stretched across modern western and central Asia, before he turned 30 years of age.
- He had travelled some 1,000 miles from Macedonia conquering seven nations and more than 2,000 cities.
- Alexander is believed to have died undefeated in any battle.

### Who is Chandragupta Maurya?

- Chandragupta overthrew the unpopular last king of the Nandas, Dhana Nanda, and occupied his capital, Pataliputra.
- Chandragupta's political mentor and chief adviser was **Chanakya** (also known as **Kautilya** and **Vishnugupta**) who wrote **Arthashastra**, the pioneering Indian treatise on political science, statecraft, military strategy, and economy.
- Guided by Kautilya and by his own military prowess, Chandragupta established mastery over the Gangetic plains and north-west and was successful against Seleucus Nicator, the successor to Alexander.
- Some matrimonial alliances followed as well, and during the campaign and afterward, there was considerable cultural contact between the Mauryans and the Greeks.
- The territorial foundation of the Mauryan Empire had been laid, with Chandragupta controlling the Indus and Ganges Plains and the borderlands.

### What made Chandragupta, the great emperor?

- With Pataliputra at its imperial centre, the Mauryan Empire for the first time unified most of South Asia.
- Chandragupta was the architect of an empire who controlled the plains of both the Indus and the Ganga which stretched until the eastern and western oceans.
- He laid the foundation of an extensive and efficient system of centralised administration and tax-collection that formed the bases of his empire.
- Trade and agriculture were reformed and regulated with the building of infrastructure and standardisation of weights and measures, and provisions were made for a large standing army.



### What is the relevance of Chandragupta and Alexander?

- Historians estimate the year of Chandragupta's rise to power from 324 BC to 313 BC, however, it is generally accepted that he ascended the throne in 321 BC.
- This would place him after Alexander had left India and just before the Greek emperor's death in Babylon.
- Greek sources suggest that Chandragupta may have been in communication with Alexander during the latter's Indian campaign.
- A L Basham notes that classical sources speak of a young Indian named **Sandrocottus** who is identical with the Chandragupta Maurya.
- Basham concluded that the emperor Chandragupta Maurya, who rose to power soon after Alexander's invasion, had at least heard of the conqueror, and perhaps derived inspiration from his exploits.

### What is the perspective attributed to greatness?

- In Indian history, 'great' has been used for the emperors Ashoka, Rajaraja and Rajendra Chola, and Akbar, among others.
- The world history notes Roman emperor Constantine, the Persians Cyrus and Darius, Herod, king of Judea, Catherine and Peter of Russia, and Frederick of Prussia as great.
- The use of the suffix 'great' has become less common in modern history-writing as historians are focusing on the society, economy, art and architecture of the rulers rather than their political victory.
- They have subjected the rulers' apparent greatness to new perspectives through a re-evaluation of old sources and by referencing those that have been discovered more recently.

## 2. ART AND CULTURE

### 2.1 Barabar Hills - The Earliest Rock-cut Monuments in India

#### What is the news?

The Barabar hills in Bihar's Gaya district contain a unique group of man-made rock-cut caves (3rd century BCE) of great historical value and architectural and sculptural significance.

#### What was the ancient association of kings with Barabar hills?

- **Ashoka** - The caves of Sudama and Visvamitra were created in the 12th regnal year of Asoka, and the Karna Chaupar was made in his 19th regnal year.
- But the Lomas Rishi cave remained unfinished and hence also contains no edict of Asoka.
- However, the ground plan of the Sudama and Lomas Rishi caves are nearly identical, and many scholars consider the latter one to be also excavated during the last 20 years of Asoka's reign.
- **Dasaratha** - In the Nagarjuni hill, Asoka's grandson, Dasaratha (232-224 BCE), had excavated three caves on the occasion of his accession to the throne at Magadha with each one bearing his edict.
- These three caves are known as the Gopika, Vadathi and Vapiya.
- Naaga-arjuni points to the divine White Elephant for *naaga* means an elephant (and also a 'serpent'), and *arjuna* means white colour.

#### What was the relevance of Ajivikas?

- All the caves of the Barabar and Nagarjuni hills were donated as dwellings to Ajivika ascetics.
- It was an ancient Indian religion that however completely vanished after the 14th century.
- The religion was founded by **Goshala Maskariputta**, who was known to be a contemporary of Mahavira and Gautama Buddha.
- Though nothing is known about the religious practices of the Ajivikas, it is said that these ascetics had worshipped the elephant.

#### What is the uniqueness of Barabar hills?

- The Barabar Hill Caves are the oldest surviving rock-cut caves in India, since the Mauryan Empire

- It is located in the Makhdumpur, Bihar, India and the name “*baraabar*” means ‘on par with one another’.
- These caves are set of seven rock-cut caves carved out from granite.
- The Barabar hilltop is divided into halves and it appears like a pair of elephants that face each other while leaning onto the ground.
- **Lomas Rishi Cave** - Lomas Rishi Cave consists of an elaborately-decorated door (*dwaara-torana*) consisting of a row of elephants that progress towards the ‘Stupa’ emblems.
- The motif of *makara* (crocodile) has been carved prominently on either end of the torana.
- The architecture used on the entrance door characterizes the form of the Chandrashala or the Chaitya arch.
- The overall shape of the entrance is usually described as like the horseshoe, but more aptly as the *gaja-prista-aakara* (in the shape of an elephant’s back).
- The Lomas Rishi cave has no inscription of Ashoka since it is incomplete, most likely because of certain technical problems like the appearance of large cracks in the granite stone.
- The interior of all the caves, including one side of the Lomas Rishi, have been finely polished, a typical feature of Mauryan art.
- **Sudama Cave** - The Sudama cave has a vaulted chamber with a ‘Mandapa’ within it.
- In the first cave of the series the ceiling of the cave is arched.
- The interior walls of this cave create a mirror effect and the surface of the cave re-echoes sounds to favor the melodies sung by the Ajvika monks who resided.
- **Vishwamitra Cave** - Also called the Viswakarma Cave, it is approachable through the steps of Ashoka.
- The cave consists of two rectangular rooms.
- The inscriptions at the entrance dedicate this segment of the raising to the Ajivikas.
- While the cave was declared sacred by the legendary King, it does not have post-Ashoka inscriptions.
- **Karan Chaupar Cave** - Confining with a single rectangular room with polished walls, the Karan Chaupar cave contains inscriptions of the 3rd Century BCE.
- The inscription, which is located at the entrance to the cave, focuses on the Buddhist practice of retirement (Vassavasa) during the rainy season.
- The scriptures also suggest that this particular segment of the Barabar Caves was reserved for Ajvika monks.

### 3. GEOGRAPHY

#### 3.1 Controversies around Water Sharing between Tamilnadu and Kerala

##### What is the issue?

The issue of the maximum water level in the Mullaperiyar dam and the possibility of a dam break has revived the controversy surrounding the Tamilnadu Kerala relations.

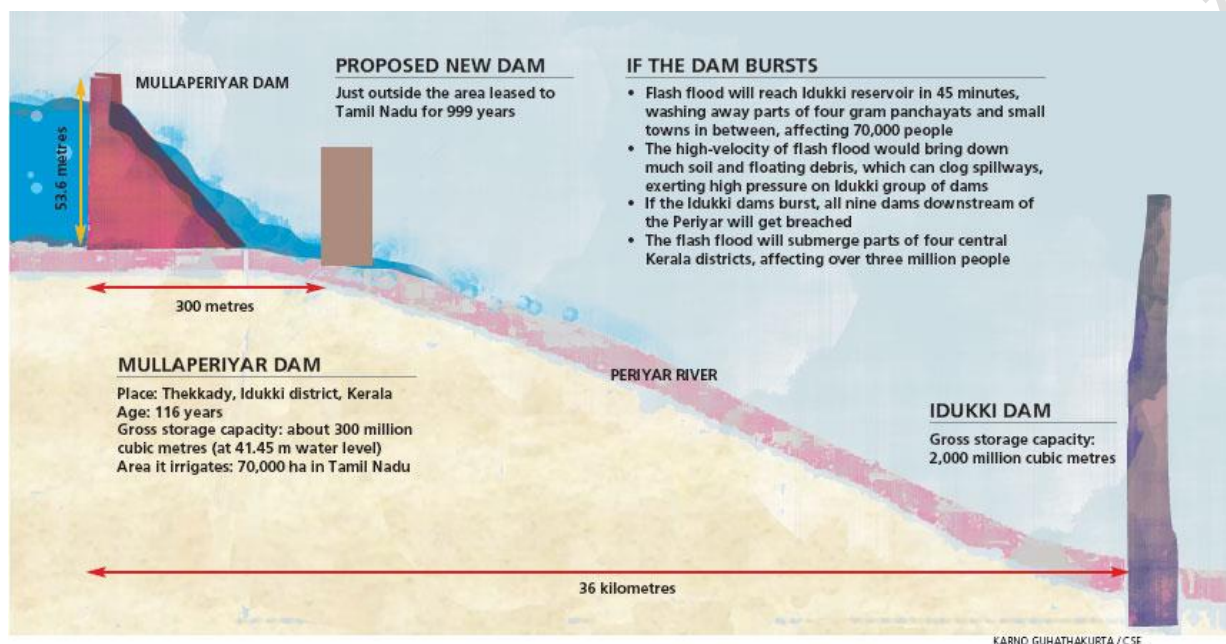
##### What is the history of the Mullaperiyar dam?

- The 130-year old Mullaperiyar dam is located on the confluence of the **Mullayar and Periyar River** in Kerala’s Idukki district.
- It was built by **Pennycuik** to create a harmonious atmosphere in the east coast by taking the water there and have people cultivate crops.
- Although the dam is located in Kerala, it is operated by Tamil Nadu following an 1886 lease indenture for 999 years that was signed between the Maharaja of Travancore and the Secretary of State for India.

##### What is the genesis of the dispute?

- In 1979, a problem erupted over the safety of the dam which led to a tripartite meeting that decided to bring the water level from the full reservoir level of **152 ft to 136 ft**.
- By mid-1990, Tamil Nadu started demanding restoration of the water level in the Mullaperiyar as it had completed the dam strengthening works.

- When no consensus was reached through negotiations, the Supreme Court was approached.
- The Supreme Court in February, 2006 allowed Tamil Nadu to raise the water level of the dam to 152ft.
- In response to that, Kerala government enacted **Irrigation and Water Conservation (Amendment) Act, 2006** and put the second schedule of Mullaperiyar Dam as endangered and fixed its maximum water level to 136ft.
- In 2014, the apex court declared the Act unconstitutional and restrained Kerala from interfering with the rights of Tamil Nadu in raising the water level in the dam to **142 feet**.
- The Kerala government has been at many times emphasising the urgent need for the gradual release of water.



### What is the standpoint of Kerala government?

- **Dam safety-** The Mullaperiyar dam suffers from structural issues and the possibility of a dam-break cannot be ruled out.
- The dam is located in an earthquake-prone area and small-time earthquakes that had happened in 1979 and 2011 caused some cracks in the dam.
- The leakage in the dam is another cause of concern.
- The technology which was put into use for constructing the dam 130 years ago was obsolete compared to the sophisticated construction methods used now.
- According to the UN University report, 35 lakh people in Kerala will be directly hit in the case of a dam-break.
- It will also have its impact on the National Periyar Park which hosts some of the endangered species.

### What is TamilNadu's position regarding the dispute?

- For Tamil Nadu the Mullaperiyar dam is like a lifeline for the people of Madras Presidency for irrigation and drinking
- The dam is also significant for the generation of the power in lower Periyar water station as the region is in shadow and arid.
- So, the government of Tamil Nadu insists on raising the water level in the dam pointing out the failure of crops.
- The government has also asserted that it has full right over the control of the dam.
- Tamil Nadu has challenged the Kerala's proposal for decommissioning of the dam and construction of a new dam.

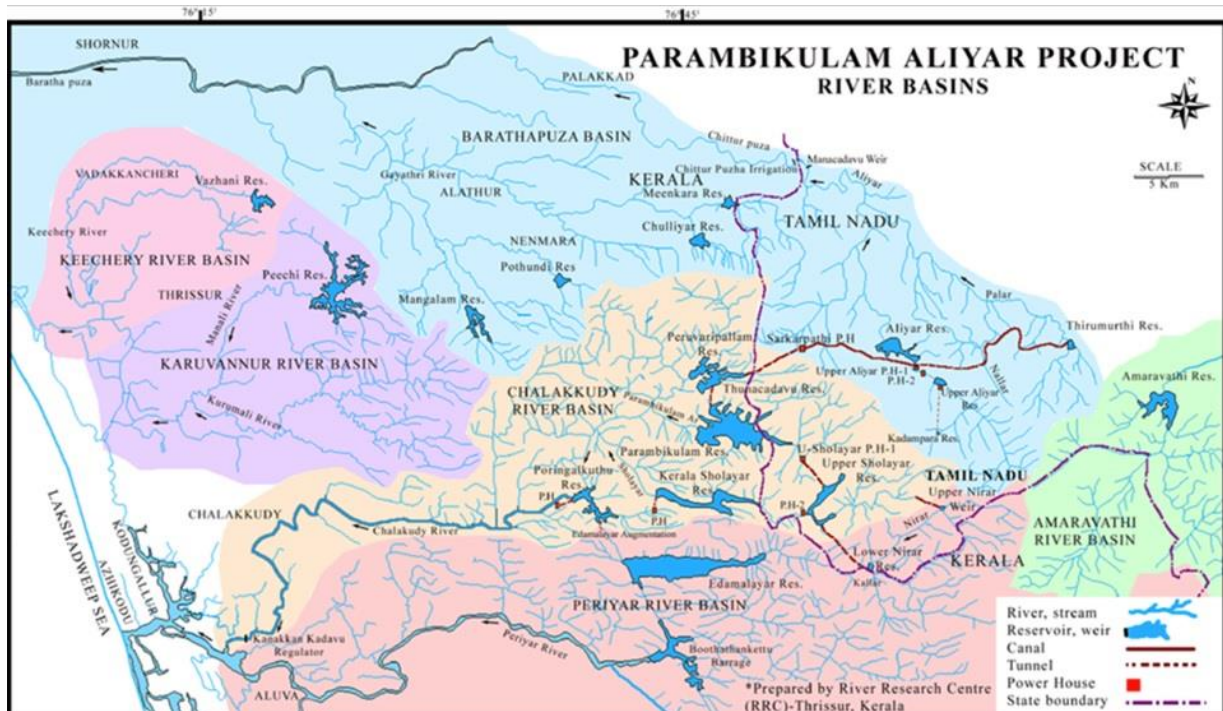
### What are the other river water issues between both the states?

- An element of uneasiness is present in the ties between Tamil Nadu and Kerala on the subject of water which is far more complex than those of Tamil Nadu with Karnataka.



- Parambikulam-Aliyar, Siruvani of the Bhavani sub-basin, Neyyar, and the proposal for linking the Pamba and Achankovil rivers of Kerala with Vaippar of Tamil Nadu, etc. are the issues.

### What is the Parambikulam-Aliyar Project issue?



- The project was signed between Tamil Nadu and Kerala in **1970** with retrospective effect from November 1958 to divert and integrate **8 West flowing rivers** - 6 in the Anaimalai Hills and 2 in the plains.
- The objective is to benefit the drought prone areas in the Coimbatore and Erode district of Tamilnadu State and to stabilize the existing irrigation system in Chittoorpuzha of Kerala State.
- The agreement ensures Kerala's riparian share in the Sholayar and Chittoorpuzha sub-basins as a guaranteed annual entitlement without applying the distress-sharing formula.
- It also ensures four months' flow (from the Northeast monsoons) from the Upper Nirar weir for Kerala's exclusive use in the Periyar basin.
- The agreement provides for review every 30 years since November 9, 1958 but it remains inconclusive.
- Kerala's concerns** - Kerala has reservations on the non-realisation of its share of 2.5 tmc of water from the Parambikulam group of rivers for the exclusive use of Chittoorpuzha valley.
- Construction of some structures in the project area without Kerala's concurrence is another area of concern.
- Tamil Nadu's stand** - It has proposed new constructions to augment its share — the Nirar-Nallar Project and Balancing Reservoir above Manacadavu for which Kerala has not consented.
- In the last 20 years, the Chalakudy basin experienced overflow in 12 years and a sizeable portion of the water is also lost as unutilisable flows.
- The way forward lies in trapping the existing spill at Chalakudy and Bharathappuzha through new reservoirs.

### What are the provisions for distribution of water in Indian Constitution?

- Entry 17 in the State List** – It makes water a state subject.
- Entry 56 in the Union List** – The Central Government is conferred with powers to regulate and develop inter-State rivers to the extent declared by the Parliament by law to be expedient in the public interest.
- Article 262** – It provides that Parliament may adopt legislation for the settlement of disputes or complaints concerning the transboundary waters in a river or river valley.

### What is the need of the hour?

- Kerala must give its permission for completing the remaining works to strengthen the dam at the earliest.



- Tamil Nadu should ensure that all the instruments for monitoring the safety and health of the dam are installed and are functioning properly.
- Both the players should adopt a rational approach while deciding on the storage levels and safety aspects of the dam.

### 3.2 Building water security - Groundwater conservation

#### What is the issue?

A key focus of water security in India has to be rational groundwater use, replenishment and conservation.

#### How is the present groundwater usage scenario?

- Groundwater Resource Estimation Committee's report (from 2015) - 1,071 out of 6,607 blocks in the country are over-exploited.
- This is likely to have worsened over the years.
- India's groundwater usage exceeds that of China and the US combined.
- More than a third of the country's population lives in water-stressed areas, and this number is expected to shoot up.
- Per capita water availability in the country had fallen to just under a third of 1950 levels by 2011; projected to fall to a fourth in the next 20 years.

#### What are the key factors for the decline?

- Rising population
- Increasing unsustainable use of groundwater
- Rapid rise in tubewell-irrigation
- Increase in the acreage under water-guzzling crops like sugarcane and paddy due to flawed policies like MSP-led public procurement and government fixing cane prices

*Agriculture accounts for 78% of all freshwater used annually in the country; 64% of this coming from groundwater.*

#### What are the present policy shortfalls?

- The Atal Bahuja Yojana (ABY), by the Jal Shakti Ministry, is the flagship conservation programme.
- But the model proposed could take decades to get implemented across the country, but there is a need for immediate results.
- The expenditure against the targets under the scheme, as also the release of funds, has been alarmingly low for the past as well as the present year.

#### What are the favourable policies?

##### National Water Policy 2020

- Contains specific strategies and deadlines
- Gives the highest priority to groundwater governance and management through a Participatory Groundwater Management (PGWM) approach

##### 2018 PM-AASHA (Annadata Aay Sanrakshan Abhiyan)

- Proposes up to 40% procurement of crops that are not as water-intensive (millets, nutri-cereals) if these are successfully integrated into the PDS

#### What is to be done?

- Stop encouraging cultivation of water-intensive crops (via MSP-led procurement, SAP/FRPs).
- Take up crop diversification
- Attention to pricing of water, and timely data on usage/availability/depletion, etc.
- Centre and the states must act rapidly on groundwater conservation if Jal Se Jeevan and other flagship water-access programmes are to be a success.

## 4. SOCIAL ISSUES

### 4.1 Error Corrected on Interpreting POCSO Act

#### What is the issue?

The Supreme Court quashed a Bombay High Court decision to acquit a man charged with assault under the POCSO solely on the grounds that he groped the child over her clothes without 'skin-to-skin' contact.

#### What is POCSO act?

- The Protection of Children from Sexual Offences (POCSO) Act was enacted in 2012 especially to protect children aged less than 18 from sexual assault.
- It admitted that a number of sexual offences against children were neither specifically provided for in existing laws nor adequately penalised.
- Therefore an offence against children needs to be explicitly defined and countered through proportionate penalties so that it acts as an effective deterrence.
- The **UN Convention on the Rights of the Child** which was ratified by India in 1992 requires sexual exploitation and sexual abuse to be addressed as heinous crimes.

#### How does POCSO and IPC deal with sexual assault?

- In IPC the definition of assault or criminal force to woman with intent to outrage her modesty is very generic.
- In POCSO, the acts of sexual assault are explicitly mentioned such as touching various private parts or doing any other act which involves physical contact without penetration.
- However it excludes rape which requires penetration; otherwise the scope of 'sexual assault' under POCSO and 'outraging modesty of a woman' under the IPC is the same.
- IPC provides punishment for the offence irrespective of any age of the victim but POCSO is specific as it is for the protection of children.
- **Section 7 of the POCSO Act** says that whoever with sexual intent touches the private parts of the child is said to commit sexual assault & the Section 8 of Act provides minimum imprisonment of 3 years.
- Whereas Section 354 of the IPC lays down a minimum of one year imprisonment for outraging the modesty of a woman.

#### What were the earlier judgements that stirred debates?

- **Nagpur Bench's judgement** - In 2020, the Bombay High Court's Nagpur bench acquitted a man under POCSO Act and held that an act against a minor would amount to groping or sexual assault **only** if there was "skin-to-skin" contact.
- The High Court had concluded that mere touching or pressing of a clothed body of a child did not amount to sexual assault.
- The accused was sentenced to minimum 3 years imprisonment under Section 8 of the POCSO Act but the High Court reduced his sentence to 1 year under Section 354 (assault of a woman to outrage her modesty) of the Indian Penal Code.
- **Gadchiroli special court's judgement** – The special court convicted and sentenced the accused for offences punishable under IPC Section 448 and 354-A (1)(i) and Sections 8 and 10 read with Sections 9(m) and 12 of POCSO Act.
- But the court set aside his conviction under Sections 8 and 10 of POCSO Act.
- It took a lenient view that the act of holding the hands of the prosecutrix and opening the zip of the pant did not fit into the definition of sexual assault.

#### What is the Supreme Court's interpretation?

- The Supreme Court has set aside the two judgments that acquitted two offenders against children from the graver charge of sexual assault.
- The court has said that narrow interpretation of the words 'touch' or 'physical contact' to 'skin to skin contact' of Section 7 would frustrate the very object of the Act.

- The court ruled that the act of touching the sexual part of body or any other act involving physical contact, if done with sexual intent would amount to sexual assault within the meaning of Section 7 of POCSO Act.

#### Why is the judgement significant?

- The High Court's understanding was flawed and out of sync with the legislative intent behind the enactment of a stringent law to protect children.
- The Supreme Court judgment sets right the misinterpretation of the statute and underscores that the core ingredient of a sexual offence is the "sexual intent" behind it.
- The Court's decision of holding such an accused guilty is in the spirit of the legislation enacted to protect a child's dignity and autonomy from undesirable intrusions.
- For a country that reported over 43,000 POCSO offences in the past one year and where the conviction rates are very low, the SC observation should accelerate things towards an unmistakably clear-cut and firm view of the situation.

#### 4.2 POCSO Shocker: Sonu Kushwaha vs State of U.P.

##### Why in news?

Recently, Allahabad High Court has said that a penetrative sexual assault on a 10-year-old boy by an offender did not amount to an aggravated form of the crime.

##### What is the issue?

- A case was registered against Sonu Kushwaha under Section 377, 506 IPC and Section 3 and 4 of POCSO Act for performing oral sex with a minor boy when he was 10 years old (2016).
- The trial court convicted and sentenced him under Section 377, 506 IPC and Section 6 of POCSO Act.
- The court sentenced the appellant to 7 years of rigorous imprisonment along with fine.

*(Note: The incident and registration of complaint happened in 2016. Hence the judgment was based on POCSO Act, 2012 and not on the POSCO (Amendment) Act, 2019 as its provisions does not apply retrospectively)*

##### What are the important provisions of POCSO Act, 2012?

- The Protection of Children from Sexual Offences (POCSO) Act was enacted in 2012 especially to protect children aged less than 18 from sexual assault.
- The Act defines a child as any person below 18 years of age and defines different forms of sexual abuse including penetrative, non-penetrative assault as well as sexual harassment and pornography.
- **Section 4** deals with penetrative sexual assault and imposes a minimum imprisonment of 7 years.
- **Sections 5 and 6** of the POCSO Act deals with aggravated penetrative sexual assault punishable with a minimum prison term of 10 years that can go up to life.
- **Section 5(m)** says that whoever commits penetrative sexual assault on a child below 12 years would be punishable with the offence of aggravated penetrative sexual assault.
- **Section 9 and 10** deals with aggravated sexual assault with imprisonment which shall not be less than 5 years but which may extend to 7 years and shall also be liable to fine.
- **POCSO (Amendment) Act, 2019** - The Act has enhanced punishment under various sections including punishment for aggravated penetrative sexual assault to be increased to include death penalty.
- The minimum punishment for penetrative sexual assault has been increased from 7 years to 10 years.
- **POCSO Rules, 2020** - New rules include the provision of
  - Mandatory police verification of staff in schools and care homes
  - Procedures to report sexual abuse material (pornography)
  - Imparting age-appropriate child rights education among others

##### What was the Allahabad high court's observation?

- The Court observed that the offence committed by the appellant neither falls under Section 5 or 6 of the POCSO Act nor under Section 9(M) of the Act as penetrative sexual assault is involved in the present case.

- The penetrative sexual assault under Section 4 is a lesser offence than aggravated penetrative sexual assault under Section 6.
- So the Court reduced the sentence of the appellant from 10 years of rigorous imprisonment to 7 years and further imposed a fine of Rs 5,000.
- The court has neglected Section 5(m) that penetrative sexual assault on a child below 12 years can be added to aggravated penetrative sexual assault list.

#### What is the role of NCPCR in this regard?

- The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005. It is a statutory body under the administrative control of the Ministry of Women & Child Development.
- It has urged the Uttar Pradesh chief secretary to file an appeal against an Allahabad High Court judgement.
- NCPCR is mandated under sections 109 of the Juvenile Justice Act, 2015 and 44 of POCSO Act, 2012 to monitor the implementation of the Acts.
- It has observed that the high court verdict of commuting the sentence of the accused from 10 years to 7 years and the offence from aggravated penetrative sexual assault to penetrative sexual assault seems to be not as per the letter and spirit of the POCSO Act, 2012.
- The commutation of sentence is observed by the commission to be prejudicial to the justice delivered to the victim in this case.

#### What does the judgement imply?

- The High Court's view that a particular act amounting to a penetrative sexual act does not attract the punishment prescribed for its aggravated form will have on lower courts trying similar cases.
- The Supreme Court's broader interpretation of the POCSO Act seems to be an error correction made by the High Courts that narrowly interpreted the words 'touch', 'physical contact' and 'skin to skin contact'.
- In this regard, the verdict in Sonu Kushwaha vs State of U.P. has to be reviewed as it seems to be based on an error of law.

#### What are the other initiatives taken for the protection of children from sexual assaults?

- **Fast Track Special Courts** - The government is setting up 1,023 Fast Track Special Courts including 389 exclusive POCSO courts for expeditious trial and disposal of cases related to rape and the POCSO Act.
- **Special Juvenile Police Unit** - Any person who has received any pornographic material involving a child or any information shall report the contents to the Special Juvenile Police Unit or the cybercrime portal.
- **Periodic training** - The government has been providing orientation programmes, sensitisation workshops and refresher courses to all persons coming in contact with the children to sensitise them about child safety and protection.
- **POCSO e-Box** - POCSO e-Box is an online complaint box for reporting child sexual abuse.
- It is an NCPCR initiative to help children report such crimes directly to the Commission.
- **United Nations Convention on the Rights of the Child** - The Convention which requires sexual exploitation and sexual abuse to be addressed as heinous crimes was ratified by India in 1992.

### 4.3 National Medical Commission Advisory on LGBTQIA+

#### Why in news?

The National Medical Commission (NMC) in its recent advisory has emphasised the need to avoid derogatory references to the LGBTQIA+ community in medical textbooks and teaching methods.

#### What are the instructions given?

*LGBTQIA+ - Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual people*

- Medical institutions should not teach students in a way that is derogatory or insulting to the LGBTQIA+ people.
- Authors of medical textbooks should amend all unscientific and discriminatory information about the community.
- Medical universities, colleges, institutions should not approve books with such derogatory references.



- Government and authorities are to strictly apply the guidelines.



## LEGAL SAFEGUARDS FOR LGBTQIA+ PEOPLE

**MAY  
17**

International Day Against Homophobia and Transphobia chosen to commemorate the WHO's decision in 1990 to declassify homosexuality as a mental disorder.

**2014**

Supreme Court ruled in **NALSA vs Union of India** that the rights and freedoms of transgender people in India were protected under the Constitution.



Preamble mandates Justice – social, economic, and political equality of status – for all.

Equality before the law, equal protection of law & right to life and personal liberty guaranteed in **Articles 14 and 21**

**2018**

Supreme Court decriminalized adult consensual same-sex relationships

**2019**

Transgender Persons (Protection of Rights) Act



iasparliament.com



### What was the Madras HC role in this?

- The NMC circular represents the fruition of efforts by Justice N. Anand Venkatesh, who framed guidelines in an order in June 2021, to protect the LGBTQIA+ community's rights.
- In the course of the hearing, Justice Venkatesh subjected himself to counselling to overcome his own mindset, limitations in understanding issues of gender non-conformity.

### Case

- A writ petition was filed by a lesbian couple for protection against harassment.
- The case went on to introspect the status of those who did not conform to gender identity assigned at birth or to hetero-normative sexual orientation.

### Textbooks

- The court's attention was then drawn to psychiatry, forensic medicine and toxicology textbooks that had unscientific and derogatory remarks against LGBTQIA+ people.

- E.g. curriculum of undergraduate forensic medicine described “sodomy”, “lesbianism” and “oral sex” as sexual offences, and “transvestism” (cross-dressing) as a “sexual perversion”.
- Some books listed homosexuality as a disorder and even mentioned [conversion therapy](#).
- Conversion therapy is, notably, banned in several countries and was harshly criticised by the Madras high court.
- The HC also observed that “queerphobia” was rampant in medical education.

*“Queerphobia” refers to prejudicial and abusive attitudes and behaviour towards the community.*

#### HC Directions

- The NMC and the Indian Psychiatric Society should bring in necessary changes in the curriculum.
- Police are advised not to harass sexual minorities.
- Changes to the police conduct rules to provide for punishing erring police personnel in this regard.

#### What lies ahead?

- The NMC advisory underscores the value of institutional awareness on issues concerning queer and transgender people.
- However, in complex issues with that of LGBTQIA+ people, there is need for greater effort by the authorities at various levels.
- Moreover, changes in law on same-sex relations must be along with an attitudinal change in society.

#### 4.4 Drug Use - Narcotic Drugs and Psychotropic Substances (NDPS) Act

##### What is the issue?

- Bollywood actor Shah Rukh Khan’s son Aryan Khan was recently arrested following a raid on a cruise ship by the Narcotics Control Bureau.
- This has brought focus to the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985 and the problem of drug use.

##### What is the procedure of seizing narcotic drugs?

- The NDPS Act, 1985 is a stringent law where the death penalty can be prescribed for repeat offenders.
- Section 50 of the Act specifies the conditions under which search of persons shall be conducted.
- When officials come across a person carrying drugs during raids or a routine check, the drugs must be seized in front of a Gazetted Officer or a Magistrate.
- In cases of sudden development, the suspect is taken to the nearby Magistrate or the magistrate is brought to the spot and only then drugs are seized.
- If this is not adhered to, the court acquits the accused persons. Only then the next stage of investigation commences.
- The onus is on the accused to prove their innocence.

##### What are the challenges to NDPS Act implementation?

- Catching the persons involved from the point of source to the point of destination as drug transaction is an organised crime.
- Going beyond State jurisdiction, and finding the source of narcotic substances and destroying them.
- Catching the accused cultivating ganja in areas bordering the States and especially, in areas that are Maoist hideouts.
- Unless every vehicle is checked (which is unfeasible) with specially trained sniffer dogs, it is difficult to check narcotic drugs transportation.
- [Given these, most drug bust cases are made possible with specific information leads.]
- Securing conviction for the accused in drugs because -
  - i. of frequent delays in court procedures
  - ii. sometimes, cases do not come up for trial even after 2 years of having registered them

- iii. the accused go out on bail and do not turn up for trial. Bringing them back from their States to trial is quite difficult

### Why should drug peddlers and end users be distinguished?

- The person using drugs in smaller quantities for personal use cannot be equated with the person producing narcotic drugs.
- A drug user needs to be seen as a patient.
- The Act as of now prescribes jail for everyone - the end user and the drug supplier.
- The Union Ministry of Social Justice and Empowerment has proposed certain changes in this regard:
  - i. Decriminalise the possession of narcotic drugs in smaller quantities for personal purposes.
  - ii. Persons using drugs in smaller quantities be treated as victims.
  - iii. They should be referred to government-run rehabilitation centres instead of awarding jail terms and imposing fines.

### Measures needed

- Address the acute shortage of psychiatrists and counsellors.
- Ensuring adequate de-addiction centre counsellors.
- Addressing street children who use whiteners, glue, painting chemicals, etc. as drugs

### What are the long-term measures needed?

#### Social

- Examine why and how people are getting addicted to narcotic drugs.
- Addressing the growing hopelessness in society due to various factors.
- Adopting some of the best practices in the world such as Iceland that had a community-led approach to the drug use problem.
- Helping transform drug addicts and making the job of policing easier
- Parents have to act as confidants first. They must be able to talk to their children and assure them of all support should they face a problem.
- Teachers should keep an eye on school surroundings to ascertain whether anyone is selling addictive substances.

#### Legal and administrative

- Redefine and redesign the law so as to tackle what acts as a trigger for drug use.
- Making the implementation state-specific, depending on the level of drugs-related problems there.
- Setting up a national fund for rehabilitation.
- Not anybody and everybody connected to drugs cases should be sent to prison. Only repeat offenders should be sent to prison.
- Civil society and governments will have to work together to create an enabling environment to address the issue.
- Certain provisions of the NDPS Act could be changed to ensure a reformative approach towards addicts.

## 4.5 A Brief History of India's Poverty Levels

### What is the issue?

There have been debates over whether the poverty has gone up during the recent years and the answer depends on whether one looks at the overall incidence of poverty in percentage terms or the absolute number of poor.

### What is poverty?

- According to the **Suresh Tendulkar Report 2009**, the concept of poverty is associated with socially perceived deprivation with respect to basic human needs.
- Poverty is a "relative" concept and it is essentially about how you are relative to those in your surrounding.
- Abject poverty or Absolute poverty refers to a state where a person is unable to meet the most basic needs such as eating the minimum amount of food to stay alive.

## What is a poverty line?

- Poverty levels refer to some level of income or expenditure below which one can reasonably argue that someone is poorer than the rest of the society.
- It is a level of income or consumption expenditure that divides the population between the poor and non-poor.
- The poverty line suggested by the Tendulkar Committee was **Rs 29** per day per person in urban areas and **Rs 22** per day per person in rural areas.
- The purpose behind choosing a poverty line is two-fold.
  1. To accurately design policies for the poor
  2. To assess the success or failure of government policies over time

## What has happened in India's fight against poverty?

- **Headcount ratio of poverty**– It is the percentage of population that was designated to be below the poverty line.
- India made rapid strides since 1973 and the incidence of poverty fell quite sharply from 55% in 1973 to under 28% in 2004.
- The Tendulkar Committee recognised that in reality education and healthcare were not being met by the government.
- This raised the poverty line and essentially told us that India was poorer than what it previously believed.
- **Absolute number of poor** - The absolute numbers remained at the same level until the start of economic reforms in the early 1990s.
- Between 2004 and 2011 when close to 140 million people were brought out of poverty in just 7 years.

*Table 1: Unprecedented fall in poverty between 2004 and 2011 has been followed by an equally unprecedented rise between 2012 and 2020*

Year	Headcount Poverty Ratio (As a % of total population)	Absolute Number of Poor (in millions)
1973	54.9	321.3
1983	44.5	322.9
1993	36	320.4
2004	27.5	301.7
2004*	37.2	407.2
2011*	21.9	269.8
2019#	20.8	346.3

*Source: Planning Commission and Santosh Mehrotra*

## What has happened to poverty levels since 2011-12?

- **Consumer Expenditure Survey (CSE)** - Poverty levels are updated using the CSE, which is conducted by the National Statistical Office (NSO) once in every five years.
- The last survey that was conducted in 2017-18 showed that for the first time in four decades consumer expenditure in India had fallen.
- This might indicate that poverty levels as well as the absolute number of poor had risen between 2011-12 and 2017-18.



- However, the government claimed that the survey suffered from “data quality” issues.
- **Santosh Mehrotra and Jajati Keshari Paridas’ study** – The two academics have attempted to ascertain the impact on poverty between 2011-12 and 2019-20 by looking at the consumption related questions in NSO’s Periodic Labour Force Survey.
- They cited that even though the incidence of poverty has come down marginally, India has witnessed an increase in the absolute number of poor in the country.
- As against pulling 140 million out of poverty between 2004 and 2011, India has seen more than 76 million fall back below the poverty line between 2012 and 2020.
- **Reasons why poverty has gone up**
  1. India’s GDP growth rate has faltered post demonetization
  2. Unprecedented rise in joblessness where 2017-18 period had touched a 45-year high unemployment
  3. Fall or stagnation of real wages even before the COVID pandemic
- The government’s focus should be on creating more jobs, especially in labour-intensive sectors, such as textiles and food processing etc. as India has lost half of the jobs in its manufacturing sector alone.

#### 4.6 Sameer Wankhede Case - SC/ST Reservation and Religion

##### Why in news?

Maharashtra Minister Nawab Malik has alleged that Sameer Wankhede, Mumbai Zonal Director of the Narcotics Control Bureau (NCB), benefitted from the reservation for Scheduled Castes (SCs) despite being ineligible for it.

##### What is Sameer Wankhede accused of?

- Dnyandev Kachru Wankhede, father of Sameer Wankhede, belonged to the Scheduled Castes (SCs).
- He converted to Islam before marrying Sameer’s mother, Zaheeda Begum.
- Sameer’s (born in 1979) birth certificate carries his father’s name as Dawood K Wankhede and his name as Sameer Dawood Wankhede.
- Sameer was raised as a Muslim, but was selected in the 2007 Civil Services Examination (CSE) under the SC quota.
- Maharashtra Minister Nawab Malik accuses that Sameer was not entitled to this reservation.

##### What are the rules of religion in eligibility for the SC quota?

##### DoPT

- No person who professes a religion different from Hinduism or Sikhism shall be deemed to be a member of the Scheduled Castes.
- There is a 15% quota for SCs in government jobs.
- But Hindu SCs who convert to Islam lose their SC status, and are no longer eligible for the quota.
- A person belonging to an SC or ST will continue to be deemed as such irrespective of his/her marriage to a non-SC/ST.
- A convert or re-convert to Hinduism and Sikhism shall be accepted as a member of SC.
- The rights of a person belonging to a Scheduled Tribe are independent of his/her religious faith.

##### Constitution (Scheduled Castes) Order

- Under the original Constitution (Scheduled Castes) Order, 1950, only Hindus were classified as SCs.
- The Order was amended to include Sikhs in 1956 and Buddhists in 1990.
- It now lays down that no person professing a religion different from Hinduism or Sikhism or Buddhism can be deemed to be a member of an SC.
- However, no such religion-based bar operates for STs and Other Backward Classes (OBCs).

##### Is the exclusion of Muslims and Christians discriminatory?

- Petitions have been filed in the Supreme Court seeking the inclusion of Muslims and Christians in the SC category.

- In 2004, the Centre for Public Interest Litigation challenged the legality of the exclusion.
- In 2008, the National Commission on Minorities concluded that there was a case for inclusion of Dalit Christians and Dalit Muslims in the SC category.
- In 2020, the SC agreed to examine a plea by the National Council of Dalit Christians to make reservations religion-neutral. The plea is pending before the court.

#### **How does caste operate in inter-caste marriages?**

- In inter-caste marriages, the child carries the caste of the father, and caste certificates are issued on this basis.
- However, courts have taken note of the surroundings in which the child was brought up.

#### **Rameshbhai Dabhai Naika vs State of Gujarat & Ors (2012) - Supreme Court ruling**

- In an inter-caste marriage or a marriage between a tribal and a non-tribal, there may be a presumption that the child has the caste of the father.
- This presumption may be stronger in the case where the husband belongs to a forward caste.
- But by no means is the presumption conclusive or irrefutable.
- It is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to SC/ST.

#### **What is the DoPT rule with false certificate?**

- A Government servant should not be retained in service if it is found that s/he -
  - i. was not qualified or eligible in terms of the recruitment rules etc (or)
  - ii. had furnished false information or produced a false certificate in order to secure appointment
- In the present case, Sameer Wankhede may face an inquiry, and may even be dismissed if his SC certificate is found to be false.
- However, the matter is currently very politicised, and clarity is required on several questions such as –
  - i. whether his father was a Muslim when Sameer was issued his certificate
  - ii. whether his father converted to Islam to marry and then re-converted, and if so, when
  - iii. whether Sameer changed his religion to Hinduism just to receive an SC certificate

### **4.7 The EWS Quota in NEET Admissions**

#### **What is the issue?**

The government has informed the Supreme Court that it will review the criteria for determining economically weaker sections (EWS) for reservation in NEET admissions for post-graduate medical courses.

#### **What is the 103rd Constitutional Amendment?**

- The [103rd Constitutional Amendment, 2019](#) amended the Articles 15(6) and 16(6) to provide 10% reservation to EWS in admission to educational institutions and government jobs.
- The criteria for the reservation is that
  1. The annual income of the person should be less than 8 lakh.
  2. The person should not own more than 5 acres of farmland.
  3. People who have a house but less than 1000 square feet in a town.
  4. Residential plot of less than 100 sq yards in notified municipalities
  5. Residential plot of less than 200 sq yards in areas other than the notified municipalities

*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.*

#### **What is the creamy layer concept in OBC reservation?**

- Based on the recommendation of the Second Backward Classes Commission (Mandal Commission), 27% reservation for OBCs has been provided in government jobs and higher educational institutions.

- The Supreme Court in 1992 (Indira Sawhney case) upheld 27% reservation for OBCs, subject to exclusion of the creamy layer.
- It is a concept that sets a threshold within which OBC reservation benefits are applicable and those falling within the “creamy layer” cannot get the benefits of this quota.
- The criteria for the reservation is that
  1. For those not in government, the current threshold is an income of Rs 8 lakh per year.
  2. For children of government employees, the threshold is based on their parents’ rank and not income.

### What is the All-India Quota scheme?

- The [All-India Quota \(AIQ\) scheme](#) was introduced in 1986 under the directions of the Supreme Court.
- AIQ is the portion of seats in the medical colleges under the state that is given to the union government.
- States are required to give 15% medical UG seats and 50% PG seats to the Centre.
- When the reservation for scheduled castes (SC) and scheduled tribes (ST) was implemented in this AIQ, there was no OBC quota.
- In 2021, 27% reservation for OBCs and 10% quota for the EWS in the AIQ were provided in the AIQ scheme including State medical and dental colleges.

### What’s the case now?

- The apex court is hearing a batch of petitions challenging the government and a medical counselling committee notice that provides 10% quota for the EWS category in NEET admissions.
- The petitions argued several issues like
  1. Breach of 50% quota threshold directed by a 1992 Supreme Court ruling
  2. Lack of study and justification on the EWS reservation criteria
  3. The government decision on EWS reservation in admission through NEET.
  4. The question on how could the income ceiling for OBC reservation and the EWS quota be the same at Rs 8 lakh
- **Rs 8 lakh ceiling** - The Rs 8 lakh ceiling for OBC and EWS is different.
- OBC creamy layer is an exclusionary provision, while EWS is an inclusionary provision.
- The one for EWS is more stringent as it includes income from all sources including “salary”, while the income ceiling for OBC does not include “salary” and “agricultural income”.
- The Supreme Court questioned the government about the parity between the OBC and EWS, and asked if there was any study done to arrive at Rs 8 lakh for the EWS.
- The government has decided to revisit the criteria for determining the EWS within a period of four weeks.
- The Constitution Bench should resolve the issue of whether reservation can be treated as a poverty alleviation measure and those not well-off but belonging to socially advanced communities can be given a share of the reservation pie.