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MAINSTORMING 2021

SOCIAL ISSUES

(DECEMBER 2020 TO SEPTEMBER 2021)

1. GENDER ISSUES

1.1 Bombay HC Verdict on Sexual Assault - Mandatory Minimum Sentencing

What is the issue?

- The Bombay High Court has acquitted a man of sexual assault charges under the POCSO Act for groping a child; instead convicted him under the IPC for a lesser offence.
- Besides drawing criticism for its restricted interpretation of the offence, the ruling highlights the concept of mandatory minimum sentencing in legislation, including POCSO.

What is the case about?

- The convict was accused of luring the 12-year old prosecutrix to his house on the pretext of giving her a guava, and pressing her breast and attempting to remove her salwar.
- The sessions court had convicted the 39-year-old BanduRagde under Section 8 of the POCSO (Prevention of Children from Sexual Offences) Act.
- It sentenced him to 3 years in jail.
- The Nagpur Bench of the Bombay High Court reversed the decision of the sessions court.
- The High Court acquitted the man of sexual assault charges under the POCSO Act.
- The allegation was said to be not serious enough for the greater punishment prescribed under the POCSO Act.
- It upheld the conviction under sections that carry a lesser minimum sentence of one year under the Indian Penal Code (IPC).

SECTION 8 OF POSCO ACT

It prescribes the punishment for the offence of sexual assault defined in Section 7 of the Act.

Why was he acquitted of charges under the POCSO Act?

- The offence under POCSO carried a higher punishment.
- So the court reasoned that a conviction under it would require a higher standard of proof and allegations that were more serious.
- Section 7 of the Act says –
 - “Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person or does any other act with sexual intent...”
- The court said that since the convict groped the prosecutrix ‘over her clothes’, this indirect contact would not constitute sexual assault.

Is such a reading of the law unusual?

- Such restrictive reading is not uncommon, especially in POCSO cases.
- E.g. In *State v Bijender* (2014), a Delhi court acquitted a man under the POCSO Act and instead convicted him of IPC offences.
 - A 7-year-old girl had testified that the convict took her into the bathroom by force, slapped her, and tore her jeans.
 - The Special Court held that the act of tearing the clothes of the victim did not constitute physical contact even if sexual intent was present.

- The court restrictively interpreted the lack of physical contact with sexual organs to mean that there was no physical contact.
- Section 7 of the POCSO Act however recognises “any other act with sexual intent which involves physical contact without penetration” to be sexual assault.

What is a mandatory minimum sentence?

- Section 8 of the POCSO Act carries a sentence of rigorous imprisonment of 3 to 5 years. However, imposing the minimum sentence is mandatory.
- In a 2001 ruling, the Supreme Court held the following:
 1. where the mandate of the law is clear and unambiguous, the court has no option but to pass the sentence upon conviction as provided under the statute
 2. the mitigating circumstances, if established, would authorise the court to pass a ‘reasonable’ sentence of imprisonment or fine but not less than the minimum prescribed

Minimum sentences have been prescribed for all sexual offences under the POCSO Act barring the offence of sexual harassment.

If a statute has prescribed a minimum sentence, courts do not have the discretion to pass lighter sentences. This is irrespective of any specific circumstances that the case or the convict might present.

Need

- A mandatory sentence is prescribed to underline the seriousness of the offence. It is often claimed to act as a deterrent to a crime.
- Mandatory minimum sentences are also prescribed in some cases to remove the scope for arbitrariness by judges using their discretion.
- In 2013, criminal law reforms (introduced in the aftermath of the 2012 Delhi gang rape) prescribed mandatory minimum sentences. It applied for criminal use of force and outraging the modesty of a woman, among other charges.

What are the concerns with mandatory sentencing?

- Mandatory sentencing regimes are put in place to remove judicial discretion. But the discretion is not removed, but merely shifted within the system - to the police.
- Mandatory sentencing in laws leads to fewer convictions.
- The absence of the opportunity to consider such factors (*in fig*), and instead prescribe a mandatory sentence (which could be harsh), pushes judges in some cases towards acquitting the accused.
- Minimum sentences under the POCSO Act are also seen to be very high.
- Mandatory sentences are thus counterproductive to the aim of reducing crime or acting as a deterrent.

PROCEDURE

After conviction, a separate hearing is conducted to award sentence. In the process, certain factors such as the following are considered -

1. the accused being a first-time offender with potential for reformation
2. the accused being the sole breadwinner of the family
3. the accused's age and social background
4. the seriousness of the offence, etc

1.2 Supreme Court's Unwelcome Remarks

What is the issue?

- The Supreme Court has asked a man whether he would marry the woman who had accused him of raping her when she was a minor.
- The Court's remarks and decision has drawn criticism from various circles for setting a wrong precedent in terms of women's rights.

What is the case?

- The apex court was hearing a bail request of a government employee, one Mohit Subhash Chavan, an employee at the Maharashtra State Electric Production Company.
- Accused of raping repeatedly a schoolgirl, he faces charges under the POCSO (Protection of Children from Sexual Offences) Act and had sought protection from arrest.

- Chavan reportedly told the Supreme Court that his mother had “offered marriage” with him to the victim when she went to police.
- Although she had initially refused, a document was reportedly drawn up (it is not clear as to between whom). In it, Chavan had promised marriage with the minor victim when she turns 18.
- But, he reportedly told the court that she had refused his offer and he could not marry her now as he was already married. The petition filed by Chavan says that when he refused to marry her once she turned 18, she filed the case.

What has the Court said?

- The Chief Justice of India S.A. Bobde had asked if he would be willing to marry her now.
- The Court also said that if he was not willing to marry, then he would lose his job and go to jail.
- Chavan stressed that he was a government servant and would face automatic suspension if charges are framed against him.
- To this, the Court said, “That’s why we have given you this indulgence. We will stay the arrest for four weeks. Then you apply for regular bail.”
- Chavan had earlier been granted protection from arrest by a trial court but that had been quashed by the high court.

What has the court remarked in another similar case?

- In another case, the Bench stayed the arrest of a man accused of rape after falsely promising marriage.
- The victim said she was promised marriage and was “brutally and sexually abused”.
- The CJI asked the girl’s lawyer:
 - “When two people are living as husband and wife, however brutal the husband is, can you call sexual intercourse between them ‘rape’?”

Why are these unwelcome?

- A relationship between two individuals, including marriage, is built around love, respect, trust and consent.
- A violent and exploitative act like rape has certainly no place within this civilised framework.
- The bottom line is that rape is the worst form of crime that violates a woman’s body, mind and soul.
- Clearly, the perpetrator has to be awarded deterrent punishment.
- He cannot be incentivised by giving legal sanction to a gruesome act by allowing such marriages.
- By offering marriage as a solution to a rape victim, the judiciary fails to protect the rights of a girl.

What are the available legal provisions?

- In both cases, the crimes attract severe penalties under the Criminal Law (Amendment) Act, 2013.
- On marital rape, the recommendation was not included in the Act.
- But, the Justice J.S. Verma Committee was clear that the law ought to specify that -
 - a marital or another relationship between the perpetrator and victim cannot be a defence against sexual violation
- The idea is that ‘a rapist remains a rapist regardless of the relationship with the victim’.
- In a 2013 case (Shimbu & Anr vs State Of Haryana), the Supreme Court itself had come down heavily against the practice.
 - The Court said the offer of a rapist to marry the victim cannot be used to reduce the sentence prescribed by law.

1.3 Marital Rape & Indian Law

Why in news?

The Chhattisgarh High Court has discharged a man from facing trial for allegedly raping his wife, citing exception under **Section 375** of the Indian Penal Code.

What is the case on?

- Based on the allegations of his wife, charges against the husband were framed by a trial court under:
 - IPC Section 376 (rape)
 - IPC Section 377 (carnal intercourse against the order of nature)
 - IPC Section 498A (cruelty towards wife by husband or his relatives)

Unmarried girls below 18 years - Sex, with or without her consent, is statutory rape under Section 375 of IPC
Within marriage - Exception 2 to Section 375 earlier gave the husband of a girl child (15-18 years) blanket liberty to have non-consensual sexual intercourse with her.
In 2017, the Supreme Court narrowed this provision and held that sexual intercourse by a man with his wife, who is below 18 years of age is rape. But Sec 375 still does not criminalize marital rape of women above 18 years.
Protection of Women from Domestic Violence Act (2005) regards marital rape as a form of domestic violence and provides for a lesser jail term than non-marital rape. It is the only way of penalizing marital rape in India, and it is a civil remedy and not a criminal action

- While, the High Court upheld charges under Sections 498A and 377, it discharged the husband under Section 376 i.e rape.
- The Exception 2 to Section 375 (the definition of rape) was cited, under which sexual intercourse by a man with his own wife (above 18 years) would not amount to the offence of rape.

Why is the marital rape exception contentious?

Inconsistent with other sexual offenses

- A husband may be tried for the following offences:
 - sexual harassment, molestation, voyeurism, and forcible disrobing (in the same way as any other man)
 - even be tried for rape, if he is separated from his wife (though not divorced) - Under Section 376B
 - non-consensual penetrative sexual interactions other than penile-vaginal penetration with his wife - Under Section 377
- The element of consensus was included in Sec 377 after the [Supreme Court judgement](#) in Navtej Singh Johar v. Union of India, 2018.
- In effect, forcible or non-consensual penetrative penile-vaginal intercourse is protected from criminal prosecution, when performed by a husband with his wife.

Liberal and progressive values of Indian Constitution

- Individual autonomy, dignity & gender equality are enshrined in fundamental rights such as Article 21 & Article 14.
- In this light, in Joseph Shine v. Union of India (2018), the Supreme Court held that the criminalising [adultery was unconstitutional](#) as it treats the wife as the husband's property.
- But exception to marital rape holds that a wife's right to personal and sexual autonomy, bodily integrity & dignity are surrendered to his husband.
- It is also violative of India's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (advocates against women's subordination to men within marriage) .

Institution of marriage

- SC had earlier observed, "Marriage is not institutional but personal – nothing can destroy the 'institution' of marriage except a statute that makes marriage illegal and punishable."
- Hence recognising marital rape as a criminal offence would not 'destroy the institution of marriage'

Legal challenges

- It is argued that since marriage is a sexual relationship, determining the validity of marital rape allegations would be difficult.
- But **marriage does not signify perpetual sexual consent**.
- The determination of consent or lack thereof in the context of a sexual interaction within marriage would be the same as in any other context.
- E.g., through physical evidence and testimonies.

1.4 Muslim Women's Right to Initiate Divorce

Why in news?

A recent judgement of a division Bench of the Kerala High Court recently clarified the Muslim women's right to initiate divorce.

What are the currently available options for Muslim women to divorce?

- One of the methods is divorce by mutual consent, through the process called Mubaaarat.
- Another right of a Muslim woman to divorce is by way of Khula, wherein she decides to terminate the marriage.
- This process may be called wife-initiated Talaq.
- Till now, Ulemas, particularly of the Hanafi School, have interpreted that Khula can be exercised only when the husband accedes to the wife's request.
- So, without the intervention of courts, a Muslim woman can unilaterally divorce her husband, only if, by contract, he has delegated the right to divorce to his wife.
- If he refuses, the woman has no option but to approach courts of law under the provisions set out in the Dissolution of Muslim Marriage Act of 1939.

What is the present case for?

- A Division Bench of the Kerala High Court was dealing with the issue of conditions in "Khula", divorce initiated by the wife.
- The legal issue before the Court was whether a Muslim wife, on deciding to leave the marriage for reasons that she feels are appropriate, has the right to pronounce unilateral extra-judicial divorce through Khula against her husband.

What are the court's observations?

- Compelling the wife to go to court for Khula undermines the right guaranteed to her in the personal law.
- The personal law is largely based on two primary sources - the Quran and Hadith (words or actions of the Prophet).
- Interpreting applicable verses of the Quran, the court said that the right of Khula is an unconditional right of the woman.
- The court draws an analogy from the right of the husband to pronounce unilateral Talaq, to say that both are of similar nature.
- The court added that the husband's approval as a condition in Khula is not correct.
- The judgment proceeds to clarify that the right to pronounce Khula is an "absolute right" conferred on the married Muslim woman.
- So, no specific reasons are required to invoke it, once there is a declaration from the wife for repudiation or termination of a marriage.
- The only thing the wife must do before the pronouncement of Khula is to undertake efforts of reconciliation.
- This is the same like how a man is obliged to, before pronouncing husband-initiated Talaq, as declared in the Shamim Ara Judgment of the Supreme Court (2002).

1.5 Tackling the Period of Taboo

Why in news?

Recently Gujarat High Court proposed guidelines that prohibit menstruating women from entering the public, religious and educational places.

What is the history behind the guidelines?

- In February 2020, college authorities of the Shree Sahajanand Girls Institute (SSGI) in Gujarat allegedly forced over 60 girls to remove their undergarments to check if they were menstruating.
- The college authorities said that menstruating women entering the temple and kitchen is against the institute's rules.
- This led to outrage and four persons were later arrested.

What is the intention behind the action of SSGI?

- The stigma finds its roots in the notion of purity and pollution attached historically to menstruating women in India.
- It is drawn from the notion that menstruating women are impure and this targets the physiological feature of being women.
- Women are treated differently because they have distinct physiological features than men.
- This perpetuates and exacerbates regressive patriarchal notions of our society.

What did Supreme Court said about this issue?

- In Indian **Young Lawyers Association v. The State of Kerala (2018)**, known as the Sabarimala case, the court explained the following.
- It said that any social practice which excludes women from participation in public life due to menstruation is discrimination on the ground of sex.
- It is impermissible under Article 14 of the Constitution and against the notion of substantive equality adopted by the Constitution.
- It supports a more formal notion of equality of separate but equal treatment and impacts deeply personal and an intrinsic part of their privacy-menstrual status.
- This type of restrictions imposed on menstruating students is an attempt by state and non-state actors to take control of their person.
- It is an outrageous exercise of power to prevent them from leading a dignified life during their period and an excessive invasion of a biological feature that makes them women.
- This goes against the intent of our Constitutional values and this practice needs to be changed.

What does Gujarat High Court say now?

- The Gujarat High Court proposed to introduce a set of guidelines that prohibit the social exclusion of menstruating women from private, public, religious and educational places.
- It emphasised on the negative impact created by such practices on a woman's emotional state, lifestyle and most significantly her health.
- But the effect of court intervention is yet to be seen in society as the previous verdict on this have failed to change societal notions surrounding it.
- Previously court held that menstruation is a part of the fundamental right to (private) life.

What can we infer from this?

- The hope for women is that slowly society will consider the norm of menstruation as taboo and abhorrent practices of discriminating as abnormal.
- This will turn into a society where no exclusion will be practiced and tolerated and no discrimination will be perpetrated.
- It will be a society where women can freely live a dignified life, nurturing all facets of their womanhood.
- It will be a society where women will be considered neither polluted nor impure during their menstruation, but will be treated with respect.

1.6 MTP Amendment Bill 2020

Why in news?

The Medical Termination of Pregnancy (Amendment) Bill, 2020 passed in the Lok Sabha in March 2020, is scheduled to be tabled for consideration in Rajya Sabha.

MEDICAL TERMINATION OF PREGNANCY, (AMENDMENT) BILL, 2020

SPECIAL CATEGORIES Upper gestation limit is extended from 20 to 24 weeks to special categories of women including survivors of rape, victims of incest, and other vulnerable women (differently-abled, minors), etc

ABNORMALITIES Upper gestation limit will not apply in cases of substantial foetal abnormalities diagnosed by Medical Board.

PRIVACY Name and other particulars of a woman whose pregnancy has been terminated shall not be revealed except to a person authorized by law. Single women can cite contraceptive failure as a reason for abortion.

REQUIREMENT

Termination of normal pregnancy upto 20 weeks, requires the opinion of one registered medical practitioner. For Termination of pregnancy in 20-24 weeks, (sp. category) requires the opinion of 2 registered medical practitioners

CONSENT

The original law mandates written consent from the guardian, if a minor wants to terminate her pregnancy, is required. The amendment excluded this provision. (not required for unmarried women either)

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MTP BILL NOW & BEFORE		
"ABORTION RIGHTS ARE CENTRAL TO A WOMAN'S AUTONOMY TO DETERMINE HER LIFE'S COURSE. NEITHER THE STATE NOR DOCTORS HAVE ANY RIGHT TO DENY A WOMAN A SAFE ABORTION."		
TIME SINCE CONCEPTION	REQUIREMENT FOR TERMINATING PREGNANCY	
	MTP ACT, 1971	MTP (AMENDMENT) BILL, 2020
Upto 12 Weeks	Advice of one doctor	Advice of one doctor
12 to 20 weeks	Advice of two doctors	Advice of one doctor
20 to 24 weeks	Not allowed	Two doctors for some categories of pregnant women
More than 24 weeks	Not allowed	Medical Board in case of substantial foetal abnormality
Anytime during the pregnancy	One doctor, if immediately necessary to save pregnant woman's life	

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What are the concerns?

- The MTP law is framed not to respect a woman's right over her own body.

- It instead makes it easier for the state to stake its control over her body through legal and medical debates.
- To illustrate, if a woman has had voluntary sex and she decides, for personal reasons, to end her pregnancy at the 24th week or later, then this would be a criminal offence.
- In such circumstances, women usually resort to unsafe methods of abortion.
- Notably, unsafe abortions are the third largest cause of maternal deaths in India.
- The amendment too continues this legacy of hetero-patriarchal population control, which does not give women control over their own bodies.
- **Inclusiveness** - The Bill uses the word “women” throughout.
- This, in effect, denies access to safe abortion to transgender, intersex and gender diverse persons.
- **Medical boards** - The Bill mandates the government to set up a medical board in every State and UT.
- Poor public health infrastructure and absence of specialists have meant that most abortions do not happen in the public sector, but at private centres or at home.
- There is overwhelming shortfalls in specialist availability, especially in rural and scheduled areas.
- Given this, it would be impossible to constitute boards with requisite specialist representation.

1.7 Supreme Court and Judicial Patriarchy

Why in news?

Recently Supreme Court issued a set of guidelines to be followed by the judiciary while dealing with sexual crimes against women.

Why the guidelines was issued now?

- Earlier in a virtual hearing of a case, CJI asked the alleged rapist’s lawyer to find out whether his client would marry the victim.
- Later he mentioned that the statement was misquoted.
- Aftermath this incident, the apex court bench now asked all courts to refrain from imposing marriage or mandating any compromise between a sex offender and his victim.
- It also issued guidelines to be followed by the courts in dealing with sexual crimes against women in the verdict.

What was mentioned in the verdict?

- The Court leaned on the “**Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia**”.
- It listed a host of stereotypes to be avoided in the verdict:
 - Women are physically weak;
 - Men are the head of the household;
 - Men must make all the decisions related to family;
 - Women should be submissive and obedient.
- It also mentioned a playwright of Henrik Ibsen which is known for courageous women characters who break the traditions of familial confines and notions of social propriety.
- It also used a quote from Ibsen that “woman cannot be herself in an exclusively masculine society, with laws framed by men”.
- The verdict acknowledges the bitter reality of women who are battling society’s ingrained prejudices and said gender violence is mostly covered in a culture of silence.
- There is an entrenched unequal power equation between men and women in cultural and social norms, financial dependence, and poverty.
- This verdict will act as a guiding force for all future judicial proclamations.

What can we infer from this?

- It is not the first time the Supreme Court is clamping down against gender stereotyping.
- In **Ministry of Defence vs. Babita Puniya** case, the court argued against treating women in the Army any differently from their men counterparts for they worked as equal citizens.
- The Court had called out the notion of romantic paternalism as an attempt to put women in a cage.
- Individuals, institutions and those in important positions must take responsibility to break the silence on bias against women.
- The Court's verdict is a move in the right direction in fighting against gender inequality.
- It would amend IPC Section 376 (rape) to increase the punishment to life term or death penalty in heinous cases where there's adequate conclusive evidence or exemplary punishment is warranted.

1.8 Women's Unpaid Work

Why in news?

Recently various political parties are promising wages to women for their unpaid household chores in their election manifestos.

How vulnerable are the women?

- Women everywhere carry a disproportionately higher burden of unpaid work for their domestic services including the unpaid care of children, old and disabled.
- Their work is repetitive, boring and a 24-hour job without remuneration, promotions or retirement benefits.
- They do this job not because they like it or are efficient in it, but because it is imposed on them by patriarchal norms- root of all pervasive gender inequalities.
- It restricts opportunities for women in the economy and in life.
- Though this work contributes to overall well-being at the household level and at the national level, it is invisible in the national database and in national policies.
- So political parties promise wages for their unpaid household chores.

- Women do 75% of the world's total unpaid care work (McKinsey)
- In India, women spend 299 minutes/day on unpaid domestic services while men spend 97 minutes (2019 NSS report)
- This inequality has a direct correlation with participation in the formal economy.
- Women's contribution is only 17% of India's GDP - less than half the global average.



What is the issue in this?

- The implementation of providing monthly wages may create problems such as affordability of the government and calculation of the amounts.
- Women may not be eager to enter the labour market and deny them opportunities to the wider world.
- More importantly, these wages may confirm unpaid work as women's work only.

What can be done?

- Governments can recognise this unpaid work in the national database by a sound time-use survey and use the data in national policies.
- It could relieve women's burden by improving technology, better infrastructure), shifting some unpaid work to the mainstream economy & making basic services accessible to women.
- It could also redistribute the work between men and women by providing different incentives and disincentives to men.
- This includes mandatory training of men in housework, childcare etc. and financial incentives for sharing housework.
- These measures will give free time to women and open up new opportunities to them.
- Payment of pension to old women (60+ years) may be a better idea to compensate them for their unpaid work.

What is the link between unpaid work and economy?

- The household produces goods and services for its members and GDP is a measure of the total production and consumption of the economy.
- Hence GDP has to incorporate this household work by accepting it as a sector of the economy.
- This unpaid work subsidises the private sector by providing it a generation of workers and takes care of wear and tear of labour who are family members.
- Unpaid work also subsidises the government by taking care of the old, sick and the disabled.

What can we infer from this?

- Unpaid work is a privately produced public good which is critical for the sustenance of the mainstream economy.
- It needs to be integrated with the mainstream economy and policies which can help in improve their productivity, reduce their burden and tap their potential in development process.
- Excluding this work from the mainstream economy indicates a clear male bias.
- There is an urgent need to expand the purview of economics not only for gender justice but for moving towards a realistic economics.

1.9 Recognising Sex Work as Work

What is the issue?

- Much like many other sections of the society, the pandemic has hit hard the adults who earn by providing sexual services.
- It is time to consider the demand of recognising sex work and granting basic labour rights to sex workers.

What are the current legal provisions?

- With subsequent amendments, the Suppression of Immoral Traffic in Women and Children Act, 1956, is now changed as the Immoral Traffic (Prevention) Act.
- This is the legislation currently governing sex work in India.
- It penalises acts such as -
 - i. keeping a brothel
 - ii. soliciting in a public place
 - iii. living off the earnings of sex work
 - iv. living with or habitually being in the company of a sex worker

DOUBLE BURDEN OF SEX WORKERS

- Amidst the pandemic, sex workers have lost their livelihood options.
- In India, sex work is not recognized as "legitimate work", under law.
- Sex workers thus do not become eligible to benefit from the government's relief programmes.
- They have been asking for decriminalisation of sex work and a guaranteed set of labour rights.
- COVID-19's impact has provided yet another reason to consider this long-pending demand.



What are the concerns?

- **Legal** - The Act represents the archaic and regressive view that sex work is morally wrong.
- It perceives that people involved in it, especially women, never consent to it voluntarily.
- As a consequence, it is believed that these women need to be "rescued" and "rehabilitated."
- This is a valid argument for minor girls, but not for many consenting adult sex workers.
- **Social** - The Act's precept has led to the classification of "respectable women" and "non-respectable women."
- It thus perpetuates the prejudice of viewing sex workers as morally devious.
- The Act, besides criminalising, has further stigmatised sex work.
- It thus leaves sex workers more prone to violence, discrimination and harassment.
- **Rights** - The Act denies individuals their right over their bodies and imposes the will of the state.
- It gives no agency to the sex workers to fight against the traffickers.

- It has, in fact, made them more susceptible to be harassed by the state officials.
- There is a distinction between women who are trafficked for commercial sexual exploitation and adult, consenting women who are in sex work of their own volition.
- The Justice Verma Commission had also acknowledged this distinction.
- Evidence also shows that many women choose to remain in sex work despite opportunities to leave after 'rehabilitation' by the government or NGOs.
- But the Act fails to recognise this choice.

What should be done?

- The Supreme Court, in *Budhadev Karmaskar v. State of West Bengal* (2011), opined that sex workers have a right to dignity.
- Parliament must also take a re-look at the existing legislation and do away with the 'victim-rescue-rehabilitation' narrative.
- The country must rethink sex work from a labour perspective and guarantee basic labour rights to sex workers.

1.10 Outlawing the Conversion Therapy

Why in news?

The Madras High Court, recently, explicitly called for an Indian ban on conversion therapy.

What is a conversion therapy?

- It is a pseudo-medical practice.
- It falsely professes to be able to change the sexual orientation of members of the LGBTQIA+ community.
- It is done to make a person act more stereotypically masculine or feminine.

Why is it unwelcome?

- There is a misguided and unscientific notion that sexuality can be altered through external intervention.
- It takes from the false belief that non-heterosexual orientations are unnatural or immoral.
- A number of Indians have become victims of conversion therapy, being subjected to physical and emotional abuse.
- A shocking 98% who undergo the therapy experience depression, anxiety, permanent physical harm and loss of faith.
- The United Kingdom recently pledged to outlaw the conversion therapy.
- Laws against the practice have already been passed in several countries, including Germany, Canada, Malta, Australia, and the U.S.

Where does India stand?

- Laws and attitudes toward homosexuality have evolved in recent years.
- The Indian Psychiatric Society has already declared that non-heterosexuality is not a mental illness.
- It cannot be changed by external attempts.
- Also, Section 377 no longer applies to consensual homosexual relations.
- But these positive steps are far from enough.
- The Mental Healthcare Act bans medical treatment without consent.
- But victims may consent to conversion therapy when administered by medical professionals.
- Because they have internalised a misplaced belief that they are abnormal.
- So, in effect, there is no law at present banning conversion therapy in India.
- Anjana Harish, a young woman, committed suicide in Goa recently after detailing the physical and mental anguish she was subjected to as part of an attempt at conversion therapy.

- It is just one case in the long history of the persecution of LGBTQIA+ people in India.

What is the Madras HC ruling?

- The court has called for a ban on the conversion therapy.
- It has also demanded legal action against those who practise it.
- It is a significant step in the fight against homophobia.

1.11 Transgenders in Chhattisgarh Police Recruitment

Why in news?

No less than 13 members of the transgender community have been selected recently as constables under the Chhattisgarh police.

What was the 2014 Supreme Court ruling on transgenders?

- The binary notion of gender denies equal protection of law to transgenders.
- This was rejected and the required relief was provided by the Supreme Court ruling in NALSA vs. Union of India (2014).
- It ruled that transgender persons have the right to decide their self-identified gender.
- The transgender community had no legal recognition till then.
- The induction of transgenders into the police force now is a vital message to people that they are as physically and mentally competent as others.
 - This is more significant in the backdrop of the fact that there was no reservation for the transgender community as a separate category.
- Earlier, a few transgenders were inducted into the Tamil Nadu police too.

What measures did the Chhattisgarh government take?

- Soon after the 2014 Supreme Court judgment, the Chhattisgarh government constituted the Third Gender Welfare Board.
- It was set up to take up various welfare measures in favour of trans people.
- Instructions were issued to all departments in this regard.
- They were to include 'third gender' as an option (along with male and female) in official documents that require mentioning the gender or sex of a person.
- District-level committees were constituted to identify members of the transgender community to implement welfare schemes for their benefit.
- Sensitisation workshops were organised at State and district levels by the police department.
- Police officers were apprised about the Central law and the Supreme Court's ruling on transgenders.
- Training capsules were prepared for police training institutes with the help of transgender members of the Welfare Board.
- Further, after the announcement of vacancies, the police helped transgender members in preparing for the written examination.

What are the legal provisions in this regard?

- The Transgender Persons (Protection of Rights) Act was enacted in 2019.
- It paved the way for issuing a certificate of transgender identity.
- This is in spirit with international conventions, particularly, -
 - i. the Universal Declaration of Human Rights, 1948
 - ii. the International Covenant on Civil and Political Rights, 1966
 - iii. the Yogyakarta Principles, 2006

- The Act recognises that transgender persons have a legal right to self-perceived gender identity in accordance with the principle of the “Psychological Test” instead of the “Biological Test”.
- According to law, transgender persons cannot be discriminated against in any matter relating to employment by any establishment.
- Recently, the Kerala High Court allowed a petition moved by a transwoman seeking admission into the National Cadet Corps based on her self-claimed gender identity.
- The court held that the provisions of the NCC Act cannot preclude the operation of the Transgender Persons (Protection of Rights) Act.
- Thus, this new protective Central legislation has given a new lease of life to the whole community.

1.12 Bridging the Gender Parity Gap

Why in news?

In the recently released Global Gender Gap index by WEF for 2021, India falls 28 spots and is placed at 140th position.

What does the report suggest?

- The global GDP could rise by as much as \$28 trillion by 2025 if women play an equal role to men in labour markets.
- If both domestic and MNCs businesses join hands with the government to close the gender gap in economic empowerment, so that India could add at least a trillion annually to its GDP by 2029.
- Companies with more women representation have achieved 22 % higher productivity, 40% better customer retention and 27% more profitability.
- Giving due recognition to the informal and vulnerable sections of the labour market and investing in them can make changes for the women workforce.
- There is a need for policies in sectors where women participation is significant—healthcare, IT, education, agriculture and also in emerging areas like artificial intelligence, block chain.
- Skill India should develop programmes for girls/women and address the systemic and behavioural issues.



2. CASTE-RELATED ISSUES

2.1 Caste-Based Census

What is the issue?

There have been mounting demands on caste based census coming from different quarters of the country.

What is caste census?

- Caste census is the procedure of systematically acquiring and recording the caste-wise tabulation of India's population

What is the need for such a demand?

- To justify the preservation of caste-based affirmative action programmes for better planning and targeting of welfare schemes
- To provide quantifiable data to support the existing levels of reservation as required by Supreme court for groups like OBC
- To favour the political parties if particular groups are established as dominant in specific geographies
- To debate on issues like disproportionate benefits from reservation by particular groups within each category
- To address the inequities in the society

What is the government's stand?

- The Union of India after Independence decided as a matter of policy not to enumerate caste wise population other than SCs and STs.
- The government cites that a census of the backward castes is administratively difficult and cumbersome
- Having caste as a part of census is so complex that it may jeopardise the decennial census itself.
- Very high number of castes and sub-castes with phonetic variations and similarities adds to the burden
- Even the Census of 1931 that included caste was not complete and accurate
- The caste census might evoke varying responses from different groups
- Government argues that caste-based census is against the idea of a casteless society

What are the gaps in the existing caste data?

- There is a Central list of OBCs and State-specific list of OBCs.
- Some States do not have a list of OBCs.
- Some States have a list of OBCs and a sub-set called Most Backward Classes.
- There are certain open-ended categories in the lists such as orphans and destitute children.
- Names of some castes are found in both the list of Scheduled Castes and list of OBCs.
- Scheduled Castes converted to Christianity or Islam are also treated differently in different States.
- The status of a migrant from one State to another and the status of children of inter-caste marriages, in terms of caste classification, are also contentious.

How can the differences be accommodated?

- A preliminary socio-anthropological study can be done at the State and district levels to establish all sects and sub-castes present in the population
- These can be tabulated under caste names that have wider recognition based on synonymity and equivalence
- Thereafter, it may be possible to do a field enumeration that can mark any group under castes found in the available OBC/BC lists.

2.2 Castes Count: On T.N. Caste-Wise Survey

Why in news?

The Tamil Nadu government has decided to constitute Commission to conduct a survey for collecting caste-wise data in the state.

Why now?

- The move may have been born out of political expediency.
- It came in response to the pre-election agitation organised by the Pattali Makkal Katchi, a party in Tamil Nadu.
 - It demands 20% exclusive reservation in education and government jobs for the Vanniyar community, its main electoral base.
- With this, the idea of a caste census is back in the realm of public debate.

What is the long-felt need?

- There is a social and legal necessity for compiling caste-wise data.
- The Supreme Court has also been asking States to produce quantifiable data to justify their levels of reservation.
- The exercise would particularly help Tamil Nadu to retain its 69% total reservation.
- At the same time, some castes that have either electoral or numerical importance across India have some concerns.
- They are concerned about the manner in which affirmative action programmes based on classes and communities have been implemented so far.
- Be it the Gujjars, or Jats or the Patidars, or the Vanniyars, some sections have been linking their prospects of advancement to exclusive reservation.
 1. In Tamil Nadu, Vanniyars' violent 1987-88 agitation resulted in the creation of a 'most backward classes' category entitled to 20% reservation.
 2. Now, some sections of the Vanniyars are apparently dissatisfied about being clubbed with over a hundred other castes.
- It is a reflection on how reservation operates that some castes feel crowded out in the competition.
- They thus aspire for the safety of exclusive reservation.

What is the commission's mandate?

- The proposed commission may not conduct an elaborate enumeration on the lines of the Centre's decennial census.
- Its mandate is to examine the methodology for collecting caste-wise particulars, conduct a survey based on that and submit a report.
- It will be quite a challenge to arrive at a sound assessment of the social and educational backwardness of each caste.

What was the Centre's initiative in this regard?

- The Census of India has not collected caste-wise data since 1931, with the exception of details about SCs and STs.
- The Centre conducted a 'socio-economic caste census (SECC)' in 2011.
- It was an attempt to link the collection of caste data along with socio-economic data.
- This was done so that there could be a comprehensive assessment of levels of deprivation and backwardness in society.
- However, presumably because of the lack of reliability of the data collected, or its political and electoral sensitivity, the caste portion of the SECC has not been disclosed so far.

2.3 Constitution (Scheduled Castes) Order (Amendment) Bill 2021

Why in news?

- The Government of India tabled the Constitution (Scheduled Castes) Order (Amendment) Bill 2021.
- It groups 7 SC sub-sects under one name (Devendrakula Velalar).

What is the Bill about?

- The Tamil Nadu government proposed certain modifications to the list of the Scheduled Castes.
- It groups seven Scheduled Caste sub-sects in Tamil Nadu under the heritage name 'Devendrakula Velalar'.
- These castes existed as separate entries.
- Any change in the lists of the Scheduled Castes and Tribes requires a constitutional amendment.
- The Constitution (Scheduled Castes) Order (Amendment) Bill 2021 would give effect to the change.
- The grouping of the castes is a long-standing political demand in Tamil Nadu.

- However, the Bill does not address the other demand of some community leaders i.e removal of their castes from the Scheduled Caste list.

What is the rationale for grouping?

- Caste-based political parties and organisations feel that shedding individual Dalit caste tags would help in the social advancement of the community.
- Their argument is that existing caste names were being used more in a derogatory sense to belittle the community.
- Besides, these seven Scheduled Caste subsects share similarities, culturally.

What are the concerns and challenges with the move?

- Delisting and shuffling of castes from one reserved social class to another is fraught with political and administrative risks.
- It could disturb the internal sharing of the communal reservation quota pool by existing castes.
- Also, it could invite objections from other communities or spur political demands for similar reclassification.
- Among the Dalits too, opinion is divided on the grouping of subsects under a common title.
- They argue that Dalits as such cannot be treated as a homogeneous group.
- There are differences within the entities in terms of social status and geographical identity.

2.4 Inequality within Intermediate Castes

What is the issue?

- The Supreme Court recently struck down the Maharashtra law granting reservation to the Maratha community in admissions and government jobs.
- It is essential, in this context, to also acknowledge the growing socio-economic differentiation within the dominant castes.

What did court say?

- The court held that the classification of Marathas as a socially and educationally backward class was unreasonable.
- The Marathas belonged to a politically dominant caste with significant economic resources.
- The majority opinion in the Indra Sawhney case was correct.
- The limit of 50% for caste-based reservation did not need consideration by a larger bench.
- The court said the fixed quantitative limit on caste-based reservation was intrinsic to the fundamental principle of equality.
- It rejected the state's argument that the breach of the limit was necessitated as the population of backward classes was over 80%.
- The Court also stressed the need to safeguard the interests of the unreserved sections.

What, however, is the socio-economic differentiation present?

- There is a growing socio-economic differentiation within the dominant castes, which the state and the court have to acknowledge.
- **Income** - In 2011-12, the average per capita income of the Marathas was second only to the Brahmins.
- Among this, the highest quintile (20% of the caste group) got 48% of the total income of the Marathas.
- The mean incomes of the highest Dalit quintile and that of the second-highest were above those of the three lowest quintiles of the Marathas.
- So, the lowest quintile and the 40% poorest of the Marathas were lagging behind the Scheduled Castes elite.
- **Education** - The above condition is partly due to changes on the education front.
- The percentage of Brahmins who were graduates and above was about 26% in 2011-12. It was only 8.1% among the Marathas.

- During 2004-05 to 2011-12, Dalits and OBCs have gained at a faster rate in education.
- The percentage of graduates among Dalits in 2004-05 was 1.9%. It has more than doubled to 5.1% in 2011-12. The corresponding figure for the OBCs was 3.5% and has doubled to 7.6%. For the Marathas it was 4.6% in 2004-05 and has come up to 8% in 2011-12.
- Correlatively, the percentage of salaried people among the Dalits was about 28% in Maharashtra in 2011-12, as against 30% among the Marathas.

Why does the verdict need reconsideration?

- The court ignored the cautionary note struck in Indra Sawhney case.
- It had expressed doubts about judicial supremacy in the broad area of social policy, which could lead to undesirable exclusion of beneficiaries.
- In the same line, the Court now fails to admit the complexity that the role of class has introduced in post-liberalisation India.
- The dated approach to social realities and a purely arithmetic limit finds no expression in the Constitution.
- Clearly, a section of the Maratha community had faced backwardness and exclusion akin to SC/STs.
- There is a strong need for positive discrimination of the lower classes of the dominant castes.
- The Court may recognise the growing social differentiation of dominant castes if a proper caste census was organised and made public.
- The Union government must look into this.

3. RESERVATION

3.1 Haryana's Job Reservation Law

What is the issue?

- The Haryana State Employment of Local Candidates Bill, 2020 passed earlier was notified recently.
- Here is a look at the government's rationale for this law, and the constitutional questions such laws would face if challenged in court.

What does the law say?

- The law requires private companies to set aside 75% of jobs for domiciles.
- This applies for jobs up to a monthly salary of Rs 50,000 or as may be notified by the government from time to time.
- It is applicable to all the companies, societies, trusts, limited liability partnership firms, partnership firms and any person employing 10 or more persons.
- It would also include an entity as may be notified by the government from time to time.
- In July 2019, the Andhra Pradesh government had passed a similar law, which was challenged in court.
- The Andhra Pradesh High Court had made a prima facie observation that the move might be unconstitutional.
 - But the challenge is yet to be heard on merits.

What is Haryana government's rationale?

- Haryana's unemployment rate has been far in excess of the national average since August 2017.
- It reached a peak in April 2020 when four out of every 10 people looking for a job failed to get one.
- The Covid-induced lockdowns have been removed and the economy opened up.
- But Haryana's unemployment rate has continued to be high and is still rising.
- The work opportunities in the government is also shrinking.
- The law thus comes at addressing these or dealing with these.

What are the legal issues in such laws?

- **Domicile reservation in jobs** - Domicile quotas in education are fairly common.
- However, courts have been reluctant in expanding this to public employment.
- The Madhya Pradesh government recently decided to reserve all government jobs for “children of the state.”
- This raised questions relating to the fundamental right to equality of citizens.
- **Private sector** - Another more contentious question is the issue of forcing the private sector to comply with reservations in employment.
- For mandating reservation in public employment, the state draws its power from Article 16(4) of the Constitution.
- The Constitution thus places the responsibility of ensuring equality of all citizens squarely on the state.
- The Constitution has no manifest provision for private employment from which the state draws the power to make laws mandating reservation.
- The Courts will have to see if the state was delegating its role to the citizens, and whether that is permissible.

What are the governments' arguments in bringing such laws?

- Public sector jobs constitute only a minuscule proportion of all jobs.
- Legislators have thus talked about extending the legal protections to the private sector.
- The objective is to really achieve the constitutional mandate of equality for all citizens.
- Another argument is that private industries use public infrastructure in many ways.
- E.g. accessing land through subsidised allotment, receiving credit from public banks, tax exemptions and in many cases subsidies for fuel, etc
- So, the state has a legitimate right to require them to comply with the reservation policy.
- A similar argument was made in requiring private schools to comply with the Right to Education Act, which the Supreme Court also upheld.
- Besides these, such laws may be seen as populist move too.

What are the likely implications of such laws?

- Domicile reservations might lead to balkanisation of India's labour market.
- Free mobility of labour corrects several demographic and economic imbalances among states.
- Curbing this mobility will inhibit overall economic growth and employment generation.
- With Haryana too, the law is likely to hurt the low-skilled workers.
- It might push the state's industrial and services sector towards greater “informalisation”.
- In other words, the same workers will be paid less and have next to nothing social security because they will not be formally on the payrolls.
- According to the Periodic Labour Force Survey, nearly 97% of workers in the private sector draw a salary of less than Rs 50,000 a month.
- So the Rs 50,000 monthly salary limit would cover most of the private sector employment in the state.

3.2 Supreme Court's Maratha Quota Verdict

Why in news?

A five-judge Constitution Bench of the Supreme Court struck down the Maharashtra law granting reservation to the Maratha community in admissions and government jobs in the state.

What is the case on?

- A 2018 law by the Maharashtra government granted quota to the Maratha community.
- The 16% quota in admissions to educational institutions and jobs in public services was later changed to 12% in admissions and 13% in jobs through a 2019 amendment.

- This took the total reservation in the State beyond the 50% ceiling imposed by earlier verdicts.
- The Bombay High Court had upheld the validity of the Maratha reservation in principle.
 - It however ruled that the law could not have fixed the percentage above what was recommended by the State Backward Classes Commission headed by M.G. Gaikwad.
- The Supreme Court has now set aside this ruling.
- It rejected the HC's reasoning that the denial of backward class status to the Marathas had pushed them deeper into social and educational backwardness.

What were the key issues addressed?

- The court had framed six questions of law on the Maratha quota issue.
- It unanimously agreed on three of those issues, while the verdict was split 3:2 on the other three.

Issue 1: On revisiting the Indra Sawhney ruling

- One of the key issues before the court was to examine whether the 1992 landmark ruling in Indra Sawhney v Union of India had to be revisited.
- The Indra Sawhney ruling by a nine-judge Bench, in which the Mandal Commission report was upheld, laid down two important precedents:
 1. it said that the criteria for a group to qualify for reservation is “social and educational backwardness”
 2. it reiterated the 50% limit to vertical quotas reasoning that was needed to ensure “efficiency” in administration
- However, the court said that this 50% limit will apply, unless in “exceptional circumstances.”
- The Maratha quota exceeded the 50% ceiling.
- The state governments asked the court for reconsidering the Indra Sawhney verdict as it laid down an arbitrary ceiling which the Constitution does not envisage.
- Additionally, in some judgements subsequent to Indra Sawhney, the Supreme Court itself had made exceptions to this rule.
- In a unanimous opinion in the recent verdict, the court held that there is no need to revisit the Indra Sawhney ruling.
- The court said that the 50% ceiling, although an arbitrary determination by the court in 1992, is now constitutionally recognised.

Issues 2&3: On whether the Maratha law can be saved under the exception

- Since the 50% ceiling is held valid, the court looked into whether the Maratha quota law falls under the “exceptional circumstances.”
- The court also looked into the Maharashtra State Backward Commission report on considering the case as exceptional circumstances.
- The state government noted that the population of backward class is 85% and reservation limit is only 50%.
- So, an increase in reservation limit would qualify as an extraordinary circumstance.

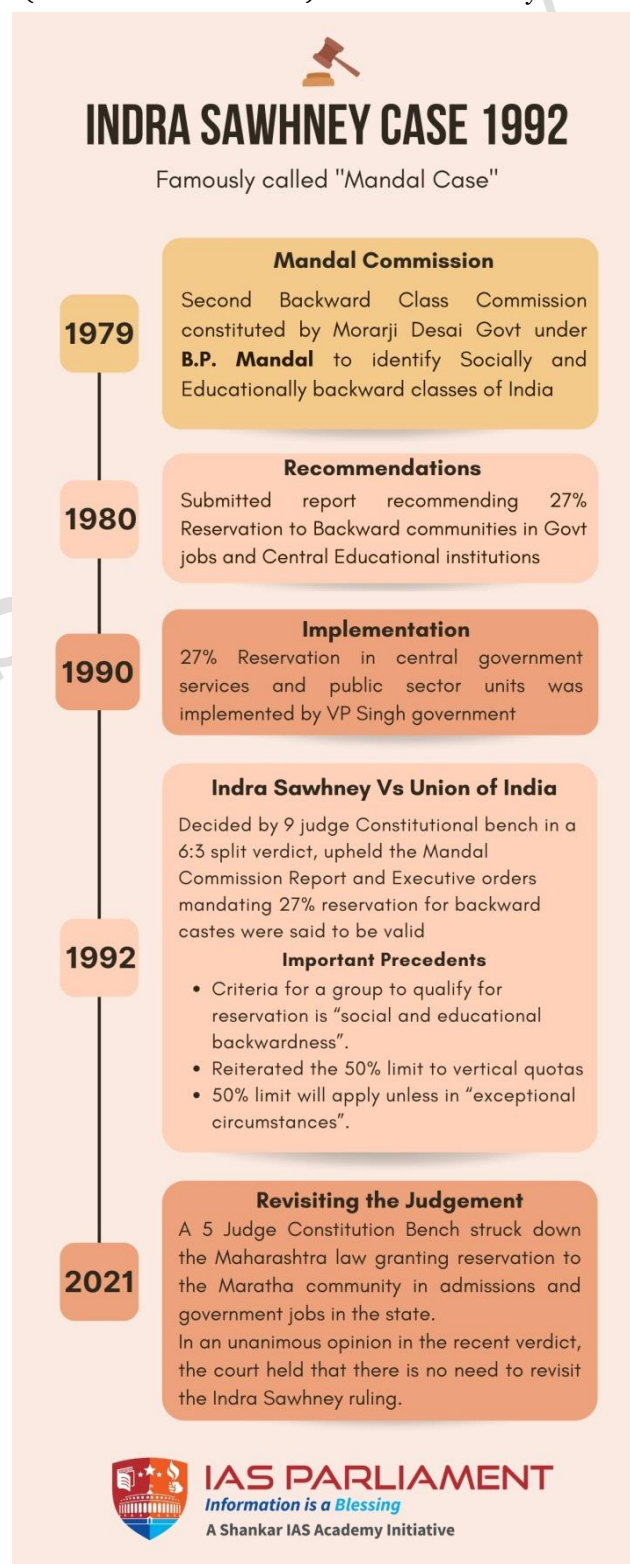
EXCEPTIONAL CIRCUMSTANCES

All five judges in the present bench disagreed with this argument.
“The Marathas are dominant forward class and are in the mainstream of National life. The above situation is not an extraordinary one.”

Issues 4, 5 & 6: On state's power to identify SEBCs, and 102nd Amendment

- The Constitution (102nd Amendment) Act, 2018 gives constitutional status to the National Backward Classes Commission.
- The Amendment also gives the President the powers to notify backward classes.
- Several states raised questions on the interpretation of the Amendment and argued that it curtails their powers.
- The Bench now unanimously upheld the constitutional validity of the 102nd Amendment.

- However, it differed on the question whether it affected the power of states to identify socially and economically backward classes (SEBCs).
- The Centre emphasized that the state government would have their separate list of SEBCs for providing reservation in state government jobs and education.
- On the other hand, Parliament will only make the central list of SEBCs which would apply for central government jobs.
- However, the Supreme Court held the following:
 - v. The final say in regard to inclusion or exclusion (or modification of lists) of SEBCs is firstly with the President.
 - vi. And thereafter, in case of modification or exclusion from the lists initially published, with the Parliament.
 - vii. In the task of identification of SEBCs, the President shall be guided by the Commission set up under Article 338B.
 - viii. Its advice shall also be sought by the state in regard to policies that might be framed by it.
 - ix. If the commission prepares a report concerning matters of identification, such a report has to be shared with the state government.
 - x. The state government is bound to deal with it, in accordance with provisions of Article 338B.
 - xi. However, the final determination culminates in the exercise undertaken by the President.
- The majority opinion on this aspect also said that –
 - the identification of SEBCs will be done centrally
 - state governments will retain power to determine the extent of reservation and make specific policy in the spirit of “cooperative federalism”
- This raises a question:
 - How does this impact interventions by other states to provide reservations for other communities, for example Jats in Haryana and Kapus in Andhra?
- The Court has said that now the National Backward Classes Commission must publish a fresh list of SEBCs, both for states and the central list.
- The Commission set up under Article 338B shall conclude its task expeditiously, and make its recommendations.
- After considering this, the President shall expeditiously publish the notification containing the list of SEBCs in relation to states and UTs, for the purpose of the Constitution.
- Till the publication of the notification, the existing lists operating in all states and UTs, and for the purposes of the Central Government and central institutions, will continue to operate.



What is the significance?

- In striking down the separate reservation, the Supreme Court has underscored the importance of adhering to the 50% limit on total reservation.
- It has also upheld the need to justify any excess by showing the existence of exceptional circumstances.
- The Court has not only found no merit in the Maratha claim to backwardness but also said the community is adequately represented in public services.

3.3 Revisiting the Indra Sawhney Judgement

Why in news?

- The Supreme Court recently examined the constitutional validity of the Maratha reservation.
- In this regard, it also said that it would look into whether the landmark 1992 decision in Indra Sawhney v Union of India needs to be revisited.

What is the Maharashtra law facing challenge?

- A Constitution Bench headed by Justice Ashok Bhushan is currently hearing the challenge to the Maharashtra law.
- The law provides quotas for Marathas in jobs and admissions in the state.
- The Bombay High Court had upheld the constitutional validity of the quota.
- However, it said that the quota should be reduced from 16% to 12-13%, as recommended by the State Backward Classes Commission.
- The ruling was challenged before a Supreme Court Bench, which referred it to a larger Constitution Bench.

What is the Indra Sawhney case?

- In 1979, the Second Backward Classes Commission (Mandal Commission) was set up. It was tasked to determine the criteria for defining the socially and educationally backward classes.
- The Mandal report identified 52% of the population at that time as “Socially and Economically Backward Classes” (SEBCs).
- It thus recommended 27% reservation for SEBCs.
- This was in addition to the previously existing 22.5% reservation for SC/STs.
- In 1990, the V P Singh led-government set out to implement the Mandal commission recommendations. This was challenged in court amidst widespread protests against the move.
- The case came up before a nine-judge Bench and a 6:3 verdict was delivered in 1992, popularly called the Indra Sawhney judgement.

What did the Indra Sawhney ruling say?

- The court upheld the office memorandums that essentially implemented the Mandal report.
- The executive orders mandating 27% reservation for backward castes were said to be valid.
 1. The reservation was made not just on the basis of caste, even if it appears so.
 2. It is also made on the basis of objective evaluation of social and educational backwardness of classes, which is the criterion previously laid down by the court.
- The landmark Indra Sawhney ruling set two important precedents.
- First, it said that the criteria for a group to qualify for reservation is “social and educational backwardness”.
- Additionally, the court also reiterated the 50% limit to vertical quotas it had set out in earlier judgements in 1963 (M R Balaji v State of Mysore) and in 1964 (Devadasan v Union of India).
- It reasoned that this was needed to ensure “efficiency” in administration.
- The court said this 50% limit will apply, unless in “exceptional circumstances”.
 1. The social and educational backwardness criteria stemmed from interpretation of various constitutional provisions.

2. But the 50% limit is often criticised as being an arbitrary limit.

How does the judgement relate with the Maratha reservation?

- There are two main constitutional questions for the court to consider in the challenge to the Maratha quota law:
 1. whether states can declare a particular caste to be a socially and educationally backward class
 2. whether states can breach the 50% ceiling for “vertical quotas” set by the Supreme Court
- Notably, the 102nd Amendment to the Constitution gives the President the powers to notify backward classes.
- The court will have to look into whether states have similar powers under this.
- Also, this power flows from the Constitution.
- The Court will thus have to see if the President is still required to comply with the criteria set by the Supreme Court in the Mandal case.
- The relevance of the Indra Sawhney criteria is also under question in another case in which the validity of the 103rd Amendment has been challenged.
- The 103rd Amendment, passed in 2019, provides for 10% reservation in government jobs and educational institutions for the economically weaker section in the unreserved category.
- Similar to the Maratha issue are the cases of Patels in Gujarat, Jats in Haryana, and Kapus in Andhra Pradesh.
- Additionally, with the implementation of the Maharashtra law, the vertical quota in the state could go up to 68%. This was 52% before the passing of the law.
- This aspect will also come under question.
- The Indra Sawhney verdict gives a pass to breach of the 50% quota rule only in exceptional circumstances.
- The court will have to test if the Maharashtra law qualifies to be an exception.
- The potential reconsideration of the popular Indra Sawhney ruling could alter the structure of reservations that has been in place for decades.

Have any other states breached the 50% ceiling before?

- States have breached the 50% ceiling before and intend to bring more reservation.
- A notable example is Tamil Nadu.
- Tamil Nadu Backward Classes, SCs and STs (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993
- The Act reserves 69% of the seats in colleges and jobs in the state government.
- However, this was done by amending the Constitution, to place the law in the Ninth Schedule after the Indra Sawhney judgment.
- The Ninth Schedule provides the law with a “safe harbour” from judicial review under Article 31A of the Constitution.
- Laws placed in the 9th Schedule cannot be challenged for reasons of violating any fundamental right protected under the Constitution.
- However, the Tamil Nadu law was challenged in 2007 (I R Coelho v State of Tamil Nadu).
- To this, the Supreme Court ruled in a unanimous 9-judge verdict.
- It said that while laws placed under 9th Schedule cannot be challenged on the grounds of violation of fundamental rights, they can be challenged on the ground that it violates the basic structure of the Constitution.
- A later Bench was to decide whether the Tamil Nadu law itself (breaching the 50% ceiling) violates basic structure, based on the I R Coelho verdict.
- The Bench has not been set up yet.

3.4 Deficit in OBC, SC Positions Vacant at IIMs

Why in news?

Union Education Minister Ramesh Pokhriyal Nishank's response in Lok Sabha revealed a severe deficit in the number of OBC, SC, ST candidates recruited as faculty in Central institutes of higher education.

What does data on vacant positions show?

- **Institutes** - More than half of the faculty positions reserved for OBCs in central institutions of higher education are vacant.
- About 40% of those reserved for Scheduled Castes and Scheduled Tribes also remain unfilled.
- The situation is particularly acute in the elite Indian Institutes of Management (IIMs).
 1. More than 60% of SC and OBC reserved positions are vacant.
 2. Almost 80% of positions reserved for STs have not been filled.
 3. This means that out of 24 positions reserved for STs, only five have been filled.
- For the Indian Institutes of Technology (IITs), data has only been provided for non-faculty positions.
- To note, both IITs and IIMs have been lobbying for exemption from such faculty quota requirements.
- **Positions** - Within the Central Universities, vacancies are higher at the level of professors.
- Out of 709 assistant professor positions reserved for STs at the 42 universities, more than 500 have been filled.
- However, when it comes to professors, only nine positions have been filled out of the 137 reserved for ST candidates.
- This means 93% of these posts remain unfilled.
- Less than 1% of the 1,062 professors in central universities are from ST communities.
- Similarly, 64% of the 2,206 assistant professor positions reserved for OBCs have been filled in the Central Universities.
- However, less than 5% of the 378 professor positions reserved for OBCs have been filled.

What is the government's response?

- After the implementation of 'The Central Educational Institutions (Reservation in Teachers' Cadre) Act, 2019', the OBC reservation has been implemented at all levels.
- The Ministry of Education and University Grants Commission (UGC) continuously monitor the vacancies.
- The onus of filling up the teaching posts lies on Central Universities which are autonomous bodies created under Acts of Parliament.
- In fact, in June 2019, UGC had written to all Universities, giving them a six month deadline to fill up their vacancies.
- The government also issued a warning that grants would be withheld if its directions were violated.
- According to the data presented in the Lok Sabha, there are now 6,074 vacant positions at the 42 universities.
- Of this, 75% are in the reserved categories.

What are the recommendations made in this regard?

- In the case of the IITs, an official committee suggested that the way out would be to exempt these institutions from reservation.
- This option is provided for under the Central Educational Institutions (Reservation in Teachers' Cadre) Act, 2019.
- Another suggestion is to dereserve lower faculty positions after a year, if suitable candidates from the beneficiary communities are not found.
- But this cannot be the right course for official policy, as reservations system is widely seen as the shortest path to equality and equity.

3.5 OBC Reservation in Medical Seats

Why in news?

The Union Health Ministry has announced 27% reservation for the OBCs and 10% quota for the Economically Weaker Sections (EWS) in the All-India Quota (AIQ) scheme for UG and PG medical / dental courses from 2021-22 onwards.

What is the All-India Quota scheme?

- The All-India Quota (AIQ) scheme was introduced in 1986 under the directions of the Supreme Court.
- The aim was to provide for domicile-free merit-based opportunities to students from any State to study in a medical college located in another State.
- It comprises 15% of UG seats and 50% of PG seats surrendered by the States for admission through a central pool in government medical colleges.
- Initially, there was no reservation in the AIQ.
- The Supreme Court in 2007 introduced the reservation of 15% for SCs and 7.5% for STs in the scheme.
- Meanwhile, the Central Educational Institutions (Reservation in Admission) Act became effective in 2007.
- It provided for uniform 27% reservation to the OBCs in all the Central Educational Institutions.
- However, this reservation was not extended to the AIQ seats of State medical and dental colleges.

How will the new provision benefit?

- The OBC students from across the country shall now be able to take the benefit of the reservation in AIQ to compete for seats in any State.
- Being a Central scheme, the Central List of OBCs shall be used for this purpose.
- The decision would benefit every year nearly 1,500 OBC (Other Backward Classes) students in MBBS and 2,500 such students in postgraduation.
- Among EWS students, around 550 in MBBS and around 1,000 in postgraduation will be benefitted.
- [The reservations will apply for undergraduate (UG) and postgraduate (PG) medical / dental courses (MBBS / MD / MS / Diploma / BDS / MDS).]

Why is the move significant?

- As AIQ seats originally belonged to the States, the quota policy applicable to the respective States ought to be applied to them.
- There were OBC seats in medical institutions run by the Centre, as well as State-specific quotas in those run by the States.
- But seats given up by the States to help the Centre redistribute medical education opportunities across the country were kept out of the ambit of reservation.
- The Centre's decision to extend its 27% reservation for OBCs to all seats under the AIQ thus puts an end to this discriminatory policy.
- [In order to balance OBC interests with those of the socially advanced sections, the Centre has also decided to provide 10% of the AIQ seats to EWS candidates.]
- The decisions are almost entirely the outcome of a Madras High Court verdict.
- The Madras HC, in July 2020, held that there was no legal impediment to OBC reservation.
- But the policy varied from State to State, and so it left it to the Centre to decide the modalities for quotas from the current academic year (2021).
- Credits also go to the efforts of the DMK party in Tamil Nadu that approached the court with the demand.

3.6 Economic Criterion & Creamy Layer

Why in news?

The Supreme Court (SC) has clarified that economic criterion alone cannot be used to classify a member of a Backward Class as belonging to the 'creamy layer.'

What is the creamy layer concept?

- Based on the recommendation of Second Backward Classes Commission (Mandal Commission), the government had notified 27% reservation for Socially and Educationally Backward Classes (SEBCs).
- Indira Sawhney case, 1992 upheld the 27% reservation for OBCs.
- But it directed the exclusion of those falling within the “creamy layer” from receiving quota benefits.
- It had mentioned the following criteria (not just economic) for exclusion from quota benefits:
 - Children of high-ranking constitutional functionaries,
 - Employees of a certain rank in the Union and State governments
 - Those affluent enough to employ others
 - Those with significant property and agricultural holdings
- Added to these was the annual income criterion.

CREAMY LAYER

Creamy layer denotes the relatively forward, socially and educationally advanced members within the OBC.

The term “creamy layer” was introduced by Sattanathan Commission in 1971.

Those falling within the “creamy layer” cannot get the benefits of reservation.

What is the present case about?

- The SC ruling is in relation to a 2016 Haryana government notification.
- The notification mentioned monetary income of Rs.6 lakh as the only criterion to identify whether a family belongs to the creamy layer.
- The Supreme Court has struck down this, stating that income cannot be the sole basis for deciding creamy layer. It has directed the State to issue fresh notifications.

What is the significance of the case?

- The Constitution permitted special provisions in favour of ‘socially and educationally backward classes’ through the 1st Amendment Act, 1951.
- The Indra Sawhney judgement, though clarified on the various criteria, is being used as a reference to bring in the economic criterion into reservations.
- Also, the 103rd Constitution Amendment that brought in 10% reservation for the ‘economically weaker sections’ (EWS) has significantly altered the affirmative action programme.
- [The current income ceiling is Rs.8 lakh per annum for availing of both OBC and EWS quotas. This is again questionable as the size of the respective quotas vary.]
- Given these, the SC judgment now gains significance as it clarifies that the creamy layer would be identified only through a mix of social, economic and other factors, [and not merely economic].

3.7 Horizontal Reservation for Women- The Bihar Way

Why in news?

The Bihar government recently announced 33% horizontal reservation for women in State engineering and medical colleges.

What does horizontal reservation mean?

- Reservation for SCs, STs, OBCs and Economically Weaker Sections (EWS) is referred to as vertical reservation.
- Horizontal reservation refers to the equal opportunity provided to other categories of beneficiaries cutting through the vertical categories.
- The beneficiaries may include women, veterans, the transgender community, and individuals with disabilities.

What is Bihar’s recent decision?

- Bihar at present has 60% reservation in the State higher educational institutions along the six vertical categories (SCs, STs, EWS and so on).

- The newly announced reservation for women in engineering and medical seats will not be in addition to this.
- It will instead be distributed across all these vertical categories, including the non-reserved 40% seats open to all.
- E.g., if an engineering college has 100 reserved seats for STs, 33 of those seats will have to be filled with ST women.
- This is based on Article 15(3) of the Constitution that allows governments to make special provisions for women and children.
- **Need** - India's female labour force participation (FLFP) rate is consistently declining and is worryingly low.
- World Bank data shows that the FLFP came down to 21% in 2019 from 31.79% in 2005.
- As per the Bihar Economic Survey 2019-20, only 6.4% and 3.9% women were employed in the urban and rural areas respectively.
- This is abysmally low compared to the all-India figures of 20.4% and 24.6% respectively.

What were the earlier measures?

- In 1992, the State had announced two consecutive days of menstrual leave for women employees in government services.
- In 2006, Bihar became the first State to reserve 50% seats for women in Panchayati Raj institutions.
- [The 73rd and 74th amendments to the Constitution, which came into force in 1993, mandated only one-third seats for them.]
- In 2013, the Bihar government made a provision for 50% reservation for women in cooperative societies.
- It also reserved 35% seats for them in police recruitment.
- This led to an increase in women officers in the police department to 25.3% in 2020 (more than double the national average of 10.3%) from 3.3% in 2015.
- In 2016, the government extended the 35% reservation for women to all government jobs in Bihar for which direct recruitment is made.
- In 2006, a scheme called the Mukhyamantri Balika Cycle Yojana was launched for Class 9 and 10 girl students.
- The enrolment of girl students went up after this scheme.
- Under the Mukhyamantri Kanya Utthan Yojana, the Bihar government provides Rs. 50,000 in instalments to girl students to support their studies and other needs till graduation.
- This is an incentive-based scheme to encourage girls to complete education and delay marriage.
- The schemes have contributed positively to the State's literacy rate among girl children.

What are the other issues to be addressed?

- The FLFP rate does not take into account unpaid work as well as the role played by social barriers like caste in blocking employment opportunities for women.
- State welfare schemes should go a long way in challenging the patriarchal control of women and systemic gender discrimination.
- The Bihar government needs to work towards reducing the female and male school dropout rate and ensure quality education at the primary and secondary levels.
- A major reason for the low FLFP rate is the lack of employment opportunities for women after matriculation and graduation.
- The State should thus ensure that women do not fall out of the labour market as they become more educationally qualified.
- In this regard, in line with the 35% reservation, the pending vacancies in the health sector, police force, teaching and other government departments can be filled.
- The government should also do away with hiring workers on contract and make all the current contractual workers permanent.

- It should also extend the engineering and medical quota for women to all institutions of higher education, including private colleges and universities.

Indra Sawhney & Others vs Union of India, 1992

Reservation of any manner shall not exceed 50%

Maratha case 2021

The 50 per cent ceiling limit for reservation laid down by Indra Sawhney case is on the basis of principle of equality as enshrined in Article 16 of the Constitution.

- Further, the quota allotted to them can be increased to 40-45%, if not 50%, and the category can be renamed as 'women and transgender persons'.
- Taking lead from Bihar, other State governments and the Union government should consider introducing horizontal quota for women (and in addition, for transgender persons.)

3.8 Refining the Reservation Policy

What is the issue?

Recently there has been series of changes to the way reservation is implemented.

What changes were made recently?

- Tamil Nadu Assembly has adopted a Bill to provide 10.5% reservation for Vanniyars within the quota of MBCs and Denotified Communities (DNCs) in admission to higher education and government services.
- Relying on the 102nd Constitution Amendment, Supreme Court reiterated that States did not have the power to identify "socially and educationally backward" classes (SEBCs)
- This forced the Centre to pass the 105th Amendment which again empowers States or Union Territories to prepare their own lists of SEBCs
- The Central Educational Institutions (Reservation in Admission) Act, 2006 provided for uniform 27% reservation to OBCs which was implemented in all the Central Educational Institutions
- However, this was not extended to the AIQ seats of State medical and dental colleges
- From this year onwards, 27% of all-India quota for admissions for medical and dental courses will be reserved for OBCs and 10% for EWS

What are the implications of the recent changes?

- Recent developments have led to the demand for a caste-based census and removal of the 50% cap on reservation
- **Caste Census** - The 2011 Socio-Economic and Caste Census's report was made public five years ago but without the data on caste
- Karnataka launched a similar exercise in 2015 but the report is not out
- Caste data alone cannot be used as the basis for breaching the 50% cap on reservation because there is no provision in the Constitution to link the quantum of reservation to the population
- **50% cap on reservation** – Tamil Nadu provides 69% quota for BCs, MBCs, SCs and STs but it was not framed keeping in mind the population of the reserved communities
- Several other States have breached the cap by adopting 10% quota for EWS

How can the reservation policy be refined?

- Sub-categorisation is essential for equitable distribution of reservation benefits among OBCs
- **Rohini Commission** on sub categorisation of OBCs reports that just 10% of the OBC communities have accrued 24.95% of jobs and admissions
- Frequently revising the income limit in determining the creamy layer
- Inclusion of factors such as the trend of rise in GDP, inflation, per capita income and rise in the cost of living, etc. while revising the income limit

- The definition of income needs to change which exempts income from salary and agriculture but takes into account income from other sources
- The parliamentary committee had said that as on 2016, OBC employees in 78 ministries and departments of the Central government constituted only 21.57% against the quota of 27%
- Political parties should channel their energies to make substantive and qualitative changes in the way the reservation is implemented
- Need to develop an evidence-based policy options that can be tailored to meet specific requirements of specific groups
- An institution like the **Equal Opportunities Commission** of the United States or the United Kingdom is in need
- An audit on performance of employers and educational institutions on non-discrimination and equal opportunity can be undertaken

4. VULNERABLE SECTIONS

4.1 India's Disabled Population

Why in news?

December 3 is recognised by UN as International day of Persons with Disabilities.

Who are disabled people & how are they identified?

- In India, men are more disabled when compared to women & disability is more prevalent in rural areas than in urban areas.
- Locomotor disability is the most common disability & more men experience it than women.
- Disabled people are identified based on questions posed in census.
- The number of disabilities in the questionnaire was expanded from 7 to 21 with the enactment of **Rights of People with Disabilities (RPwD)** in 2016.
- Hence, 2019 report includes questions to identify people with temporary loss of an ability, neurological, blood disorders and acid attack victims as disabilities.

How does statistical data about them varies?

- As per the 2011 census, 2.2% of India's population lives with some kind of physical or mental disability.
- The latest 2019 NSO report, which used the expanded definition of disability reported a slightly higher prevalence.
- In 2019 study by the Public Health Foundation of India which used Annual Health Survey's metrics gives a lower prevalence.
- Similarly, a group of doctors from AIIMS found that alternate questionnaires like the Rapid Assessment of Disability have resulted in a prevalence ranging from 1.6%-43.3%.

Why do we need the exact data about number of disabled people?

- In India, disabled people enjoy benefits ranging from reservation in educational institutes to concessions on railway tickets.
- To claim these benefits, they have to furnish disability certificate.
- Moreover data on the prevalence and type of disability will be useful in making allocations for welfare schemes.
- The 2021 census will have disability questions as per the RPwD Act of 2016 & department of disability affairs is in the process of creating a national database of PwDs.

4.2 Protection of Children from Sexual Offences Act

Why in news?

In the **Satish Ragde v. State of Maharashtra** case the accused was acquitted under POCSO Act.

What is the POCSO act?

- The 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 breast of the child is said to commit sexual assault & the Section 8 of Act provides minimum imprisonment of 3 years.
- But Section 354 of IPC lays down a minimum of 1 year imprisonment for outraging the modesty of a woman.

What is present judgment?

- The Bench acquitted a man found guilty of assault on the grounds that he touched the victim's limbs and breasts only over her clothes and there was no skin-to-skin contact between them.
- In **Vishaka v. State of Rajasthan (1997)**, the Supreme Court held that the offence relating to modesty of woman cannot be treated insignificant.
- In **Pappu v. State of Chhattisgarh (2015)**, though the High Court, acquitted the accused under Section 354 of the IPC as the offence was found lacking in use of criminal force or assault.
- But it convicted him for sexual harassment under Section 354A which requires physical contact and advances as a necessary element.
- In UK, **Sexual Offences Act 2003** says that touching (with sexual intent) includes touching with any part of the body, with anything else or through anything.
- But the POCSO Act is silent on these matters & it requires skin-to-skin touch as a mandatory element of an offence for the conviction.

4.3 Expanding the Scope of POCSO Act

What is the issue?

- There is growing international jurisprudence around child sexual abuse issues.
- A fundamental defect of POCSO Act in India is its inability to deal with historical cases. It is time to revise the law in this context.

Why is delayed reporting justified?

- It is often difficult for the child to report the offence or offender at the earliest.
- It takes time for the child to recognise what has

HISTORICAL CHILD SEXUAL ABUSE

- Historical child sexual abuse refers to incidents that are reported late.
- Historical abuse is not just confined to institutions.
- It also includes intra-familial abuse.

happened and become confident to report.

- The delay may be due to -
 - i. lack of awareness
 - ii. the trauma caused
 - iii. threats from the perpetrator
 - iv. fear of public humiliation
 - v. absence of trustworthy confidant
- Another reason is to do with the accommodation syndrome.
- [The child keeps the abuse as a secret because of the fear that no one will believe the abuse, leading to accommodative behaviour.]

What is the legal barrier involved?

- The Criminal Procedure Code (CrPC) makes it clear that any delay in filing complaint dilutes the efficacy of the prosecution's case.
- It prohibits judicial magistrates from taking cognisance of criminal cases beyond a specific time period.
- Earlier, cases involving child sexual abuse not amounting to rape was defined under Section 376 of the Indian Penal Code (IPC).
- It was classified under the lesser offence of outraging the modesty of a woman (Section 354 of the IPC).
- Any reporting, under Section 354 of the IPC, more than 3 years after the date of incident would be barred by the CrPC.
- So, this renders historical reporting of child sexual offences which took place before 2012 legally implausible.
- [The Protection of Children from Sexual Offences Act (POCSO) came into place in 2012.
- POCSO is the law in India to protect children from offences of sexual assault, sexual harassment and pornography]

What is the need now?

- The limitation provisions were incorporated into the CrPC to avert delayed prosecution.
- But child sexual abuse cannot be viewed in the same manner as other criminal offences.
- There is thus a compelling need to allow delayed reporting and prosecution in this.

What is the challenge though?

- A major drawback of delayed reporting is the lack of evidence to advance prosecution.
- It is believed that there would be less than 5% chance for gathering direct physical and medical evidence in such cases.
- India, in particular, suffers from a lack of procedural guidance as to how to prosecute historical cases of child sexual abuse.
- In contrast, the U.K. has issued detailed Guidelines on Prosecuting Cases of Child Sexual Abuse.
- It is dealt with in detail under the Sexual Offences Act of 2003, to assist the police in such cases.

4.4 Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021

Why in news?

- The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2021, was passed in Rajya Sabha. It was earlier passed in the Lok Sabha.
- The Bill seeks to amend the Juvenile Justice Act, 2015.

What was the 2015 Act?

- The 2015 Act replaced the Juvenile Delinquency Law and the Juvenile Justice (Care and Protection of Children) Act 2000.

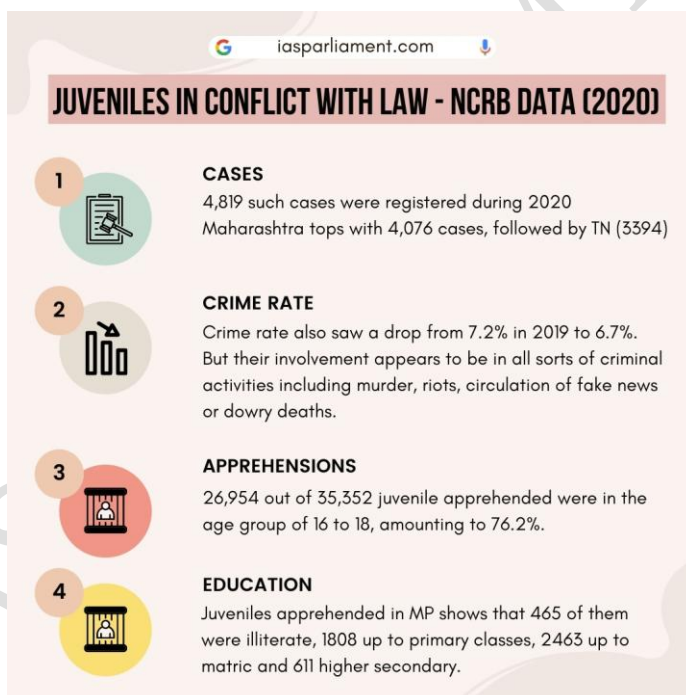
- **Crime** - It allows the trial of juveniles in conflict with law in the age group of 16-18 years as adults, in cases where the crimes were to be determined.
- The nature of the crime, and whether the juvenile should be tried as a minor or a child, was to be determined by a Juvenile Justice Board.
- **Adoption** - The Act brought more universally acceptable adoption law instead of the Hindu Adoptions and Maintenance Act (1956) and Guardians of the Ward Act (1890) which was for Muslims.
- The Act however did not replace these laws.
- The existing Central Adoption Resource Authority (CARA) was given the status of a statutory body to enable it to perform its function more effectively.

What are the provisions empowering the DMs?

- With more powers, the District Magistrates (DMs), including Additional DMs (ADMs), can now issue adoption orders under Section 61 of the JJ Act.
- DMs and ADMs will also monitor the functioning of various agencies under the JJ Act in every district.
- These include the Child Welfare Committees (CWCs), Juvenile Justice Boards, District Child Protection Units and Special Juvenile Protection Units.
- The changes will ensure speedy trials and increased protection of children at the district level, and will also enhance accountability.
- [Adoption processes are currently under the purview of courts. With an overwhelming backlog, each adoption case could take years to be passed.]
- The DMs will also carry out background checks of CWC members to check for possible criminal backgrounds.
- This is to ensure that no cases of child abuse or child sexual abuse is found against any member before they are appointed.
- [CWC members are usually social welfare activists with educational qualifications.]
- The CWCs should report regularly to the DMs on their activities in the districts.
- **Concern** - The DM is in charge of all processes in a district including all task forces and review meetings.
- So, it is felt that the too many responsibilities given to DMs under the amendment may not be given a priority.

What are the changes made in offences by juveniles?

- Under the 2015 Act, offences committed by juveniles are categorised as heinous offences, serious offences, and petty offences.
- Most heinous crimes have a minimum or maximum sentence of 7 years, and juveniles between 16-18 years age would be tried as adults for these.
- Serious offences generally include offences with 3 to 7 years of imprisonment.
- The 2021 Bill adds that serious offences will also include offences for which maximum punishment is imprisonment of more than 7 years, and minimum punishment is not prescribed or is less than 7 years.
- Presently, there is no mention of a minimum sentence in the JJ Act.
- So, juveniles between the ages of 16-18 years could also be tried as adults for a crime like the possession and sale of an illegal substance.
- Such offences will now fall under the ambit of a "serious crime".



- The provisions thus ensure that children, as much as possible, are protected and kept out of the adult justice system.
- The Act also provides that offences against children that are punishable with imprisonment of more than 7 years, will be tried in the Children's Court.
- And offenses with punishments of less than 7 years imprisonment will be tried by a Judicial Magistrate.

4.5 Compulsory Registration of Child Marriages

What is the issue?

Rajasthan's amendment to Compulsory Registration of Marriages Act, 2009, which provides for mandatory registration of marriages, including child marriages has created a lot of controversy.

What law prohibits child marriage?

- The **Prohibition of Child Marriage Act, 2006** is enacted for the prohibition of solemnisation of child marriages.
- A male who has not completed 21 years of age and a female who has not completed 18 years of age is a 'child' for the purpose of this Act.
- Section 3 of the Act makes the child marriages voidable at the option of contracting party being a child.
- Delhi High Court in **Lajja Devi vs. State NCT of Delhi** said that the 2006 Act does not make a child marriage void per se but only declares it as voidable.
- The Supreme Court in **Independent Thought vs. Union of India** found that the 2006 Act while prohibiting a child marriage and criminalizing it does not declare it void.

What is the background to compulsory marriage registration laws?

- The Supreme Court in **Seema vs Ashwani Kumar case** held that marriages of all citizens of India belonging to various religions should be made compulsorily registrable in their respective States where the marriage is solemnized.
- So, Rajasthan Compulsory Registration of Marriages Act, 2009 was enacted for compulsory registration of marriage and procedure.
- The act makes it a duty of the parties to submit such a memorandum within a period of thirty days from the date of solemnization of the marriage to the Registrar.
- If the parties have not completed the age of 21 years, the parents or guardian of the parties shall be responsible to register the marriage.
- Penalty for non-registration is punishable with fine.

What is the new amendment about?

- The amendment provides that if the bride hasn't completed 18 years of age and/or the groom hasn't completed 21 years of age, then their parents or their guardians should register the marriage within 30 days.
- It was alleged by opposition that it justifies child marriage for the state giving certificates to minor kids.
- But the government argues that the bill doesn't make the marriage legal and the District Collector can take action against them.

How can the issues be addressed?

- As recommended by the Law Commission of India, the Centre can amend the 2006 Act to declare that child marriage below 16 years void, and those solemnised when either party was between 16 and 18, voidable.
- States of Karnataka and Haryana has made child marriage below certain years as void.
- The Rajasthan act should have provided for a route for prosecution of illegal child marriages as like the Uttarakhand Act.
- Even if there is no such provision, the Registrars as observed by the Kerala High Court, can intimate the Child Marriage Prohibition Officers and help prosecution of offenders.

4.6 Malnutrition

What is the issue?

- As per **Lancet** study in 2017, 68% of 1.04 million deaths of children under five years in India are due to malnutrition.
- Comprehensive National Nutrition** reveals that in India half of all children under five years are found to be either stunted or wasted.
- The survey was carried out by Ministry of Health and Family Welfare and UNICEF.

What are the effects of malnutrition?

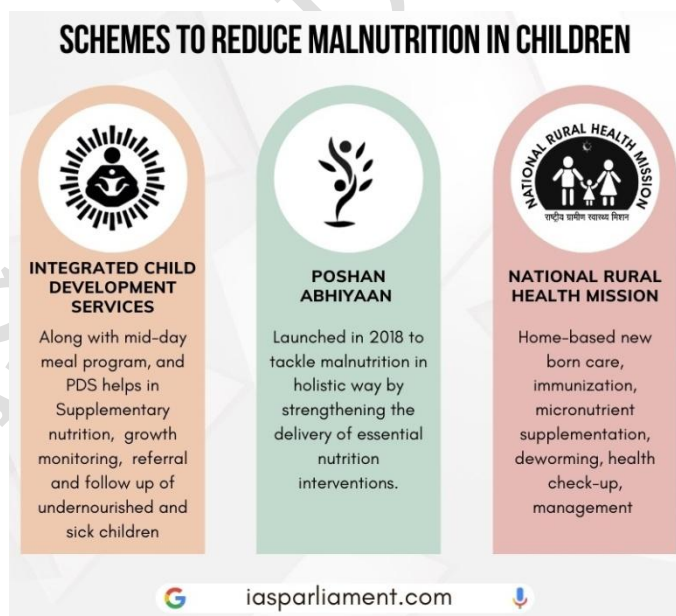
- Children who survive from malnutrition do not perform well in the school as they could otherwise do.
- Their brains do not develop to the fullest & tend to fall short of their real potential — physically as well as mentally.
- Malnourished children are more susceptible to illnesses, their bodies become weaker.
- Thus, any nutrition interventions have to be made within the crucial period of 2 years of child birth. Once missed it could result in irreversible damage to child's physical & mental well-being.

How does COVID pandemic pose challenge to malnutrition?

- Pandemic has led to economic insecurities by disproportionately reducing the incomes of vulnerable sections.
- It forced girls to early marriage, early motherhood, discontinue their schooling, reducing institutional deliveries.
- Pandemic - prompted lockdowns disrupted essential services intensified malnutrition.
- It disrupted supplementary food under Anganwadi centres, mid-day meals, immunisation and micronutrient supplementation.
- Thus, it has pushed millions into poverty and affected economically disadvantaged to malnutrition and food insecurities.

How can we address this challenge?

- More funds have to be earmarked to preserve nutritional security particularly women and children in slum areas, migrants, tribal population.
- To truly grasp the COVID-19-caused nutrition crisis, the country must track nutrition indices through data systems.
- Evidence generated through data will help in tracking the positive impact of POSHAN Abhiyaan.
- In this challenging backdrop, leaders from across the stream had come together to support government in a six-pronged action for nutrition.
- The clear action points towards sustained leadership, dedicated finances, multi-sectoral approach and increased uninterrupted coverage of a vulnerable population in nutrition programmes.
- Efforts need to be accelerated & nutrition has to be given primary importance else it will derail the nutrition gains India has already made.



4.7 Uncounted Deaths of Sanitation Workers

What is the issue?

In 2021, the government has no accurate record of the number of sanitation workers (including manual scavengers), nor their approximate death count.

What are the realities and concerns?

- The sub-castes of the Dalit community are largely engaged in all these unidentified categories of sanitation work, including manual scavenging.
- So far, in its identification-related surveys, the government has merely reached –
 - i. 5% of the total population of manual scavengers
 - ii. 20% of the total area of India
- **Causes of Failure**
 - i. Inadequacy of identification of manual scavengers by urban and rural local bodies
 - ii. Failure to comply with Prohibition of Employment as Manual Scavengers and Their Rehabilitation (PEMSR) Act by District magistrates
 - iii. Failure in exhibiting appropriate lists of examination of sanitation infrastructures by Appointed Inspectors
- Safety gears and devices promised to scavengers under the Safaimitra Suraksha Challenge do not reach them.
- When workers identify themselves as manual scavengers, they are often harassed with death threats by local authorities.
- Non-compliance with the Act is hardly ever penalised.
- Compensation and promises of one-time case assistance are only provided in around 40% of “all recorded cases”.



What should be done?

- Estimating the actual number of deaths of sanitation workers (manual scavengers or other categories).
- Highlighting the lapses in the implementation of the PEMSAR Act and government interventions, and rectifying them.

4.8 Draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021

Why in news?

The Union Ministry of Women and Child Development (WCD) has invited suggestions for the draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 which is to be introduced in Parliament soon.

How is it different from the 2018 Bill?

- The 2018 bill dealt with trafficking, rescue, protection and rehabilitation of victims.
- The 2021 bill expands the scope to also include offences taking place outside India.
- The bill has increased the scope of the nature of offences of trafficking.
- There are stringent penalties including life imprisonment, and even death penalty in certain cases.
- The new bill also makes the NIA (National Investigation Agency) the central investigation authority looking into such offences.

OBJECTIVES OF DRAFT TRAFFICKING IN PERSONS BILL, 2021

- ✓ to prevent trafficking in persons, especially women and children
- ✓ to provide for care, protection, and rehabilitation to the victims
- ✓ to respect and protect victim rights
- ✓ to create a supportive legal, economic and social environment

What are the key provisions?

- **The law will apply to -**
 - i. all citizens of India, within and outside the country
 - ii. persons on any ship or aircraft registered in India wherever it may be or carrying Indian citizens wherever they may be
 - iii. a foreign national or a stateless person who has residence in India
- It also says the law “shall apply to every offence of trafficking in persons with cross-border implications”.
- The bill widens the range of offenders who can be booked under the law.
- It brings in public servants, armed forces personnel or anyone in a position of authority under its ambit.
- The draft bill also widens the definition of the “victim” by including transgenders, besides women and children.
- **Committee** - Once it becomes an Act, the central government will notify and set up a National Anti-Trafficking Committee.
- And state governments will set up these committees at state and district levels.
- The bill also says the investigation needs to be completed within 90 days from the date of the arrest of the accused.
- **Punishment** - Any offence of trafficking shall be punished with rigorous imprisonment.
- The term which shall not be less than 7 years but may extend to 10 years.
- The person shall also be liable to fine which shall not be less than one lakh rupees.
- Similar to the 2018 version, the 2021 draft proposes more severe penalties for “aggravated offences.”
- It also seeks to crack down on organised crime syndicates.
- [Aggravated offences include cases that may result in the death of the victim.
- It also includes cases where the victim suffers grievous injury (in cases such as acid attack), organ mutilation or removal of organs, or where the victim is a child.]
- Aggravated form of trafficking would invite rigorous imprisonment for a term for 10 years.
- It may also be extended to imprisonment for life and shall also be liable to fine which may extend to 10 lakh rupees.
- In case of the death of the victim, the bill proposes life imprisonment along with a fine of Rs 30 lakh.
- The bill also proposes imprisonment up to 20 years and death penalty for such offenders:
 - i. rigorous imprisonment for 20 years, which may extend to life
 - ii. in case of second or subsequent conviction – death penalty with fine which may extend up to 30 lakh rupees

What are the concerns?

- **Overlapping** - There are laws already in place on ‘forced labour’ and ‘sexual exploitation’.
- Section 370 of the Indian Penal Code (IPC) deals with trafficking already.
- The present bill has only made some improvements to it.
- With a law on trafficking, there will be a lot of overlapping. The law does not clarify which law is to apply.
- **Precision** - In its current form, the draft Bill seems to be lacking in precision.
- It lacks an understanding of the contributing factors to trafficking.
- These may include vicious poverty, debt, lack of opportunity, and development schemes missing their mark.
- **NIA** - Another concern relates to handing over investigation in trafficking crimes to the NIA.
- It would burden the NIA which is already facing human resource issues.
- Also, this move would be an attack on federalism, by removing local enforcement agencies out of the picture.

- **Definition** - The broad definitions of victims in the Bill disregard consensual sexual activity for commerce.
- This would only land up criminalising sex work and victimisation of the exploited.
- Bringing pornography into the definition of sexual exploitation is also a concern.
- It would not allow even for any adult, consumption of non-exploitative, consensual material.
- **Reporting** - Reporting of offences has been made mandatory with penalties for non-reporting.
- But the tortuous processes would explain the ground reality that victims often do not want a complaint to be recorded.
- **Death penalty** - The mention of the death penalty for various forms of aggravated trafficking offences needs to be reconsidered too.

What should the approach be?

- There should be one comprehensive code, repealing all previous laws, avoiding overlapping in trafficking legislation.
- It is also being suggested that attachment of property would be a greater deterrent than a possible jail sentence.
- In all, trafficking needs a wholesome approach that is cognisant of the causative factors, and sensitive to ground realities.

5. COMMUNALISM

5.1 3 States, 3 Anti-Conversion Laws - Similarities and Differences

Why in news?

The Madhya Pradesh government is set to follow Uttar Pradesh and Himachal Pradesh in passing an anti-conversion law that outlaws religious conversion solely for the purpose of marriage.

What are the key features?

- **Common feature** - At least 10 states including MP and Himachal Pradesh already have anti-conversion laws.
- The key difference in the new laws is that they seek to criminalise conversions solely for the purpose of marriage.
- A common feature of all three laws is the declaration of such marriages as “null and void.”
- The penalising of conversions done without the prior approval of the state is also a common feature.
- **Prior notice** - The MP law requires a 60-day prior “declaration of the intention to convert” to the District Magistrate for conversion to be valid.
- Following this, a couple from different religions can be legally married.
- The Uttar Pradesh law, Prohibition of Unlawful Conversion of Religious Ordinance, 2020, too requires a 60-day notice.
- It also requires the Magistrate to conduct a police inquiry to ascertain the real intention behind the conversion.
- The Himachal Pradesh Freedom of Religion Act, 2019 requires a 30-day prior “declaration of intention to convert”.
- **Investigation** – The MP law states that there cannot be an investigation by a police officer except on the written complaint of the person converted or the person’s parents/siblings.
- Guardians of the person converted can file a complaint only with the permission of a court.
- The MP law also says that no police officer below the rank of a sub-inspector can investigate an offence under the law.
- The UP law allows the same people as allowed by the MP law to file a complaint.

- Under the Himachal law, prosecution cannot be initiated without the prior sanction of an officer not below the rank of a sub-divisional magistrate.
- **Burden of proof** - The MP law places on the person converted the burden of proving that the conversion was done without any coercion or illegality.
- The Himachal law has a similar provision.
- The UP law goes further, placing this burden of proof on people who “caused” or “facilitated” the conversion and not on the individual.
- Even in the police inquiry, if the Magistrate is not satisfied, criminal action can be initiated against persons who “caused” the conversion.
- This includes those who committed the offence; omitted to act and prevent the offence; and aided, abetted, counselled or procured people for committing the offence.
- **Maintenance & inheritance** - Clearly, unless given prior notice to the state government, the marriage is declared “null and void” if either the husband or the wife has converted, even consensual.
- But, MP’s new law seeks to protect the right of women and her child from such “null and void” marriage.
- Under Section 9, the woman whose marriage has been declared null and void under this legislation, and her children, will have a right to maintenance.
- The law does not, however, provide a recourse for ensuring the marriage can be protected subsequently.
- Neither the UP nor the Himachal law has such provisions for protecting women and children.
- **Quantum of punishment** - The offence of illegal conversion under the laws of all three states is cognisable and non-bailable.
- This means that an arrest can be made without a warrant, and bail is granted only by the discretion of the judge.
- Under the MP law, a person can be sentenced to a jail term between one and 5 years for converting or attempting to convert unlawfully.
- If the person converted is a woman, a minor or a person belonging to a SC/ST, the sentence is 2 to 10 years.
- It also provides for a jail term of 3 to 10 years for concealing one’s religion during the marriage.
- The UP law provides for a minimum punishment of one year, which can be extended up to 5 years, and repeat offences can carry double the maximum sentence.
- Men are awarded a higher punishment if convicted of causing conversion of a woman, a minor or a person belonging to an SC/ST – in which case the sentence is between 2 and 10 years.
- In the Himachal law, a person can be sentenced to a jail term of one to 5 years for converting or attempting to convert unlawfully.
- If the person converted is a woman, a minor or a person belonging to an SC/ST, the sentence is 2 to 7 years.

5.2 The dark step of writing hate into law – Anti-Conversion Laws

What is the issue?

- The new marriage laws (Anti-Conversion-Laws) by some states seem to put state power and the law behind majoritarian communal biases.
- This needs contemplation given the democratic and secular ideals guaranteed by the Indian constitution.

How have the marriage provisions evolved?

- In 1872, the colonial state drew up a law after it received petitions from Keshub Chandra Sen of the Brahmo Samaj.
- The petitions demanded that people of different backgrounds be allowed to marry according to their ‘rites of conscience’.
- The Special Marriage Act, in 1954, took this further in independent India.
- It took away the colonial law’s requirement to renounce religion.

- However, it still allowed intrusion by the state, unlike under personal laws, by demanding notices to be put up in advance.
- This was done to ensure that there were no living spouses or minors being married.
- But this clause was misused by communal social groups to stop such unions.

What makes anti-conversion-laws flawed?

- **Fundamentally wrong** - Under the Constitution, it is the individual citizen who has and exercises rights and obligations.
- The Constitution does address communities when speaking of minority rights and untouchability, to only acknowledge and overcome social discrimination.
- This is also because such social discrimination impedes the ability of those citizens to exercise their rights as individuals.
- But the new laws treat religious communities, instead of individual citizens, as basic entities.
- The laws take away the agency that the Indian Constitution allows each individual to exercise.
- They thereby fundamentally distort the framework of Indian republic.
- **Violate privacy, choice rights** - The laws blatantly violate the Right to Privacy.
- The Supreme Court has in fact decreed [Right to Privacy](#) to be fundamental.
- The level of state interference in a civil union, which is a solemnisation of a relationship between two individuals, breaches the basic structure of the Constitution.
- **Right to choose faith** - The laws impede the exercise of an individual's right to choose her faith without seeking state sanction.
- Under the laws, everyone (from the police, local administration and communal groups and families) is given ample time to interfere and deny the individual, without any locus to do so.
- In matters of change of profession, nationalities, electoral choices and even political parties, no such interference is brought into play.
- **Patriarchal** - The basis of the new law is deeply patriarchal.
- This is like reliving 1920s India when competitive communalism fanned charges of Hindu girls in North India being taken away like cattle.
- The malicious myth of 'love jihad' where adult women are seen as property is now the law.
- The laws target Muslim men, but are also a living hell for Hindu women as in the [Hadiya case](#).

What are the larger concerns?

- **Constitutional values** - India is said to have effected a social transformation given the values spelt out and written into the law of the Republic.
- The Constitution offered high principles to aspire for, and ensured the citizens were always jumping just a little bit, to be better.
- All laws should meet this brief.
- However, these new laws do the opposite; they put state power and the law itself behind majoritarian communal biases.
- This would only empower regressive social mores governing marriage and fellowship.
- Inter-religious marriages may be less than 2.5% of all marriages, but the promise they hold goes beyond numbers.
- They reaffirm the fundamental constitutional premise of all citizens being equal, besides promoting the ideals of freedom and fraternity.
- **Trust** - Spreading rumours of 'love jihad' even as the government confirmed in Parliament that there was no evidence of it is unfair.

- But more than that, it is dangerous as it seeds mistrust, and changes fundamental ideals that all plural democracies must live by.

5.3 Places of Worship (Special Provisions) Act

Why in news?

Recently, Supreme Court asked the Centre to respond to a plea challenging the Places of Worship (Special Provisions) Act, 1991.

What is the law about?

- The law seeks to maintain the religious character of places of worship as it existed on the 15th day of August, 1947 except in the case of Ram Janma bhoomi-Babri Masjid dispute.
- Sections 4 of the Act declare that no person shall convert any place of worship of any religious denomination into one of a different denomination or section.
- Section 4(2) says that all suits, appeals or other proceedings regarding converting the character of a place of worship, that were pending on August 15, 1947, will stand abated.
- The above provision is applicable from the date on which this act commences and fresh proceedings cannot be initiated from then.
- However, legal proceedings can be initiated with respect to the conversion of the religious character of any place of worship after the commencement of the act i.e. after August 15, 1947.

What does the law say about Ayodhya?

- Section 5 mentions that the act is not applicable to Ram Janma Bhumi Babri Masjid and to any suit, appeal or other proceeding relating to the said place or place of worship.
- Besides the Ayodhya dispute, the act also exempts:
 1. Any place of worship that is an ancient and historical monument or an archaeological site or is covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958;
 2. A suit that has been finally settled or disposed of;
 3. Any dispute that has been settled by the parties or conversion of any place that took place by acquiescence before the Act commenced.

What has the Supreme Court said about the Act?

- In the 2019 Ayodhya verdict, Supreme Court said the law manifests the secular values of the Constitution.
- It says that the act provides confidence to every religious community that their places of worship will be preserved and their character will not be altered.
- It says that the norms bind those who govern the affairs of the nation at every level.
- And these norms seek to implement the Fundamental Duties under Article 51A and it gives a positive mandates to every citizen.
- The court also mentioned that State has enforced its constitutional commitment and operationalised its constitutional obligations of upholding the equality of all religions and secularism ideology.

Why was the law challenged?

- It was challenged on the ground that it violates the principle of secularism.
- The petition said that the cut-off date of August 15, 1947 is arbitrary, irrational and retrospective.
- It prohibits Hindus, Jains, Buddhist, and Sikhs from approaching courts to re-claim their places of worship which were encroached by invaders.
- Moreover it indicates that Centre has no power to legislate provisions of State list- pilgrimages or burial grounds.
- But the centre replied that it could make use of its residuary power under **Entry 97 of the Union List** to enact this law.
- Entry 97 confers residuary powers to the Centre to legislate on subjects that are not enumerated in any of the three lists.

- The petition highlights the fact that since the cut-off date for the law is the date of Independence, the status quo determined by the colonial power will be considered as final.
- This another major criticism against the law.

5.4 Personal choices, the Constitution's Endurance - Salamat Ansari

What is the issue?

- The Allahabad High Court cancelled a case against a Muslim man (Salamat Ansari), filed by the parents of his wife (Priyanka Kharwar (now Alia)) who converted to Islam before marrying him.
- The verdict comes as a reminder of the Constitution's cherished values in the backdrop of some state governments bringing in legislations against what they call as "Love Jihad".

What is the case about?

- The petitioners, Salamat Ansari and Priyanka Kharwar, had approached the High Court seeking orders to quash the FIR that was lodged against them.
- The FIR alleged that a series of crimes had been committed.
 - These included one under Section 366 of the IPC, which criminalises the abduction of a woman with the intent to compel her to marry against her will.
- The petitioners claimed that they were both adults competent to contract a marriage.
- They had in fact wedded long before in August 2019, as per Muslim rites and ceremonies, only after Ms. Kharwar had converted to Islam.

What were the State's arguments?

- The State resisted the claims of the couple that they married by will.
- It argued that Mr. Ansari and Ms. Kharwar's partnership had no sanctity in the law.
- It held that a conversion with a singular aim of getting married was illegitimate.
- In making this argument, the government relied on a pair of judgments delivered by single judges of the Allahabad High Court.
 - On the judgment in *Noor Jahan v. State of U.P.* (2014), the HC held that a conversion by an individual to Islam was valid only when it was predicated on a "change of heart" and on an "honest conviction" in the tenets of the newly adopted religion.
 - Additionally, it ruled that the burden to prove the validity of a conversion was on the party professing the act.
- Therefore, in the present case, it was argued that it was for the woman to establish that her conversion was borne out of her conscience.

What is the HC ruling now?

- The Division Bench rejected the above theory.
- It held that the judgment in *Noor Jahan* was incorrectly delivered.
- The court said that it did not see "Priyanka Kharwar and Salamat as Hindu and Muslim.,"
- It rather saw them "as two grown up individuals who out of their own free will and choice are living together peacefully and happily...."

What are the HC's observations?

- The High Court declared that religious conversions, even when made solely for the purposes of marriage, constituted a valid exercise of a person's liberties.
- It ruled that the freedom to live with a person of one's choice is intrinsic to the fundamental right to life and personal liberty.
- The order thus recognised that Indian society rested on the foundations of individual dignity.
- This means that a person's freedom is not conditional on the caste, creed or religion that her partner might claim to profess.

- By invoking the SC's judgment in Puttaswamy case, the HC held that an individual's ability to control vital aspects of her life inheres in her right to privacy.
- This promise includes the preservation of decisional autonomy, on matters including of "personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation".
- According to the HC, the Constitution is violated every time matters of intimate and personal choice are made vulnerable to the paternal whims of the state.

What is the underlying idea?

- Article 25 of the Constitution expressly protects the choices that individuals make.
- In addition to the right freely to profess, practise and propagate religion, it guarantees to every person the freedom of conscience.
- Conscience is certainly not something that the state can examine as a function of its sovereign authority.
- The right to freedom is promised because questions of conscience (which include choices of faith) are matters of ethical autonomy.
- The provision's ultimate purpose is to allow individuals the freedom to lead their lives as they please.

What is the U.P. government's response though?

- Already, seemingly in response to the judgment, the U.P. government has introduced an ordinance.
- It makes not only religious conversions that are forcefully obtained an offence but that also declares void any conversion found to be made solely for marriage.
- In supporting the law, the State will likely rely on a 1977 Supreme Court judgment in Rev. Stainislaus v. State of Madhya Pradesh.
- There, the Court upheld, on grounds of public order, two of the earliest anti-conversion statutes in India:
 1. the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968
 2. the Orissa Freedom of Religion Act, 1967
- These laws required that a District Magistrate be informed each time a conversion was made.
- They also prohibited any conversion that was obtained through fraud or illegal inducement.

6. REGIONALISM

6.1 Pathalgadi Movement in Jharkhand

What is the issue?

- Soon after taking charge in December 2019, the Hemant Soren-led government in Jharkhand had decided to drop "all cases" related to the Pathalgadi movement of 2017-2018.
- Almost a year later, the Soren government is still to send a requisition to the court to withdraw the cases. Here is a look at the Pathalgadi movement.

What are the key 5th Schedule provisions?

- Tribals form more than 1/4th of Jharkhand's population.
- Areas of Dumka, Godda, Deoghar, Sahabgunj, Pakur, Ranchi, Singhbhum (East & West), Gumla, Simdega, Lohardaga, Palamu, Garwa (some districts have partly tribal blocks) are part of the 5th Schedule of the Constitution.
- It vests the Governor of a state with special powers to safeguard and protect the interests of the tribal population.
- These include examining the laws enacted by the parliament or legislature and accordingly restrain or allow the laws.
- This is done keeping the interests of the tribals in tune with customary law, social and religious practices among others.

What are the concerns in this regard?

- In the absence of exercise of the above power by the governor in Jharkhand, the tribal population tried to assert their rights on their own.
- Siraj, a rights activist in Jharkhand, highlights the following concerns:
 1. The governor never exercised the power to implement 5th schedule provisions and PESA in letter and spirit.
 2. The executive too has largely avoided these issues till date.
 3. For instance, there is less clarity on the role of Gram Sabhas in case of minor minerals, ownership of minor forest produce or power to manage the agri-produce market.
- In all, participation of the tribal population in the decision-making apparatus remains very low.

What is Pathalgadi and how did the movement begin?

- **Stone plaques** - The word pathalgadi is drawn from a tribal custom of erecting stone plaques on the tomb of tribal people in Jharkhand.
- It is also done in honour of their ancestors, and to announce important decisions regarding their families and villages.
- It is also used to simply mark the boundary of their villages.
- **Inscriptions** - The Provisions of the Panchayats (Extension to Scheduled Areas) Act (PESA) was enacted in 1996.
- When this came into force, former IAS officer BD Sharma, now deceased, started the practice of erecting stone plaques in villages with provisions of the Act inscribed on it.
- This was done to empower people belonging to the 5th Schedule area on their legal and constitutional safeguards.
- The pathals also quoted several orders of High Courts and Supreme Court. E.g.
 1. the Samatha judgement which is about preserving the tribal autonomy, their culture and economic empowerment
 2. P Rami Reddy vs Andhra Pradesh 1988 orders
- The latter says that 'special legislations cannot be held to be unconstitutional on the ground of violation of other fundamental rights, such as Article 14 and 19(1)(g)' and others.
- The villagers said that they read these provisions and orders to reiterate -
 1. the supremacy of powers of traditional Gram Sabha and traditional Adivasi governance systems
 2. rights of Adivasis over land
 3. the restricted rights of non-adivasis and outsiders in the scheduled areas to settle down and work
 4. that Adivasis are the original inhabitants and owners of India
- **The Raghubar Das government** then had attempted to tweak Chhotanagpur Land Tenancy Act, 1908 and the Santhal Pargana Tenancy Act, 1949.
- As per the 1949 Act, a tribal can buy or sell their land only to another tribal.
- Raghubar Das government did this by passing an ordinance amending Land Acquisition Act (Jharkhand Amendment) in 2017 and awaited Governor's approval.
- However, the bill did not get the approval due to massive protest by tribal communities.
- This led to violence in the state capital and protests were held in various parts of the state.
- As an extension to this protest, the tribals of Khunti, Gumla, Simdega, Saraikela, West Singhbhum area started erecting stones in their villages with PESA provisions highlighting their rights.
- This ultimately came to be known as the **Pathalgadi movement**.

6.2 Job Crunch and Growing Nativism

What is the issue?

- The Haryana government has recently passed a legislation that mandates companies in Haryana to provide [jobs to local Haryanvis](#) first.
- Similar legislations by other states reflect a rising trend of subnationalism in the States of India which call for course corrections.

What was the need for Haryana's legislation?

- The jobs situation in Haryana is staggeringly dismal.
- The unemployment rate there is the highest of all States in India.
- A whopping 80% of women in Haryana who want to work cannot find a job.
- More than half of all graduates in Haryana are jobless.
- Politically, 11 out of the 18 million voters of Haryana do not have a regular job.
- When such a vast majority of adults are jobless, it inevitably leads to social revolutions and political upheavals.
- Given this, Haryana government chose to reserve the few available jobs for its own voters.

What is the concern with this?

- Many States in India have embarked on this nativism adventure.
- Jharkhand too approved a similar legislation to reserve jobs for Jharkhand residents.
- The Dravida Munnetra Kazhagam (DMK) in Tamil Nadu recently announced a similar proposal in its manifesto for the upcoming Assembly elections.
- The objective is to protect the interests of the vast number of their jobless locals.
- However, such policies have attracted criticisms as it is against the liberal idea of a free economy.
- Focusing on creating more jobs, and not on reserving the few available ones, is said to be a better approach.
- But, it is to be understood that creation of new jobs is not entirely in the control of State governments.
- It is a complex interplay of multitude of factors.

How do states create jobs?

- Job creation is obviously an outcome of the performance of the larger economy.
- The Chief Minister of a State in India has limited control over the management of the larger economy.
- A State, thereby, aims at attracting new investors and businesses that can create jobs.
- In that case, a firm, for its expansion, would look for -
 - i. abundant high quality skilled and unskilled labour
 - ii. land at affordable prices
 - iii. uninterrupted supply of electricity, water
 - iv. other such 'ease of business' facilities
- State governments in India can theoretically compete with each other on these parameters to attract a firm to set up operations in their State.
- Further, any tax advantages that a particular State can provide vis-à-vis others will increase its attractiveness.

What are the challenges to job creation?

- Realistically in India, a poorer State can compete only in very few of the above parameters against a richer State.
- An elected State government can certainly, during its five-year tenure, attempt to provide high quality local infrastructure.
- State governments may also have the ability to provide land at affordable prices or for free.

- However, the availability of skilled local labour is a function of many decades of social progress of the State.
- It cannot be retooled immediately.
- After the introduction of the GST, State governments have particularly lost their fiscal autonomy.
- They have no powers to provide any tax concessions to businesses.
- In simple terms, states have less or no control over immediate availability of skilled manpower or to use taxes as a tool to attract firms.

3-3-3 DANGER

- The three richest large States (Maharashtra, TN & Karnataka) are 3 times richer than the three poorest large States (Bihar, UP and Madhya Pradesh), in per-capita income.
- This used to be 1.4 times in 1970.
- This gap between the richer and poorer States in India is only widening rapidly and not narrowing.
- The increasing gap is due to the agglomeration impact of modern economic development paradigms.



- **Agglomeration effect** - Beyond all the above factors, the most critical factor in the choice of a location for a large business is what economists term as the 'agglomeration effect.'
- It refers to the ecosystem of supply chain, talent, good living conditions and so on.
- A State with an already well-established network of suppliers, people, schools, etc are at a greater advantage.
- E.g. if Amazon's competitor Walmart is already established in Karnataka, then there is a greater incentive for Amazon to also locate itself in Karnataka to take advantage of the established ecosystem
- This leads to a cycle of the more prosperous States growing even faster at the expense of the lagging States.

What is the implication?

- In effect, there is the absence of a level playing field among states and lack of fiscal autonomy.
- Given this, it is difficult for the developing states to attract new investments and create new jobs.
- There is clearly a widening inter-State inequality with a 'rich States get richer' economic development model.
- Also, there is an impending demographic disaster and shrinking fiscal autonomy for elected State governments.
- A combination of these factors would inevitably propagate **nativistic sub-nationalism** among the States of India.
- So, an elected government would naturally resort to appeasement policies to deal with the worrying employment situation.
- It is in this line that the States go for policies on reservation for the locals.
- The need of the hour is a level playing economic field for the various States and much greater fiscal freedom.
- This is crucial to create new jobs and not just protect the available ones.

7. ISSUES RELATED TO POVERTY

7.1 Issues with MGNREGA

What is the issue?

- It is highly worrying that today legislations are promulgated without consulting those it wanted to serve.
- This can be witnessed in the recent farmers protest against the farm laws as they were enacted without public consultation.

Why do any policy/law does require deliberations?

- Continuous dialogue is the norm for effective programme implementation & it is more required during the initial stages of law making of a government programme.
- Though policies are formulated with good principles, their implementations go in mess and are frequently amended due to people's concerns.

- In particular, redistributive, people-facing welfare policies require constant feedback which can be seen in MGNREGA policy.
- MGNREGA has the problem of payment rejections, software flaws & these issues occur due to lack of stakeholder's consultations.

What is the concern with the issue of payment rejections?

- Payments get rejected when government initiates the payment but money doesn't get credited due to technical issues.
- For example, on occasions, the block level data entry operators make errors in entering the account or Aadhaar details of workers.
- At other times, banks consider accounts as 'dormant' when the accounts are not used for some time leading to depriving money for the workers.
- Hence thorough understanding of the complex payment architecture is required which involves various line departments, banks & National Payments Corporation of India (NPCI).

What is the concern with software flaws?

- Software flaws break the link between workers's Aadhaar and their bank account in which software is maintained by the NPCI.
- Hence the workers face rejection stating that 'Inactive Aadhaar' exists & government officials, bank officials are unaware of these complex errors.
- Workers had to make multiple trips to short-staffed & overcrowded banks and are rudely replied that their payments have not come.
- Sometimes the reasons for rejections are rarely provided creating uncertainty to their existing insecure situation.
- Field officials often resort to temporary and incorrect quick fixes which backfire leaving the workers in despair.
- These issues were resolved by Rajasthan in a sensible manner.

How did the state of Rajasthan address this issue?

- Department of Rural Development of the Government of Rajasthan has held numerous discussions which resulted in a workshop.
- It involved worker groups, CSO's who interacted directly with the aggrieved workers, administrative officers from the village level to the State level, and bankers.
- They gave detailed guidelines on well-defined responsibility, timelines, monitoring and protocols to be followed by officials which resulted in a significant reduction in payment rejections.
- In a period of one year from the workshop, the Rajasthan government cleared Rs 380 crore worth payments to workers that were earlier stuck due to rejections.
- Currently, only 2.7% payments are pending for regeneration from the State government & 12.3% are under process by the banks.
- Its goal was to ensure that every person who worked gets their full payment on time.

What are the key takeaways from this?

- Open communication channels, eagerness to work with worker groups and a keen ear to the ground are necessary to successfully implement policy/laws.
- This approach helped in benefitting thousands of MGNREGA workers in Rajasthan.
- Mandatory disclosure of information is required for any programme which can be seen in Rajasthan's Jan Soochna Portal (JSP).
- JSP is a single platform in the public domain providing information across 60 departments of over 104 schemes.
- The design and formats of each scheme should be arrived through dialogue involving government officials & numerous CSO's.

- In Rajasthan's MGNREGA, engagement with civil society organisations has been institutionalised through MGNREGA samvads some of which are attended by the Chief Minister.
- Hence if government is committed to its constitutional principles, then it must pay attention to multiple view points and listen to the voices of the marginalised.

8. GOVERNMENT INTERVENTIONS

8.1 Decentralised Urban Employment & Training

What is the issue?

- Public works could provide valuable support to the urban poor, especially if women get most of the jobs.
- In this regard, here is a look at a suggestion called the DUET (Decentralised Urban Employment and Training) scheme.

What is the need for social protection in urban areas?

- The COVID-19 crisis has drawn attention to the insecurities that haunt the lives of the urban poor.
- Generally, they are less insecure than the rural poor, partly because fallback work is easier to find in urban areas.
- Nevertheless, the urban poor are exposed to serious contingencies.
- These include both at individual (such as illness and underemployment) and collective (lockdowns, floods, cyclones, financial crises and so on) levels.
- There is, thus, a need for better social protection in urban areas.

What are the possible options?

- Universalising the Public Distribution System in urban slums would be a step forward, and it can be done under the National Food Security Act.
- But foodgrain rations do not take people very far.
- Employment-based support is one way of doing more.
- It has two major advantages: self-targeting, and the possibility of generating valuable assets or services.
- There has been much discussion, in recent months, of a possible urban employment guarantee act.
- The specifics of the act, however, are not so clear, and there is little experience of relief work in urban areas.
- The Decentralised Urban Employment and Training (DUET) is a proposal in this regard.

How does DUET work?

- The government, State or Union, would issue "job stamps", each standing for one day of work at the minimum wage.
- The job stamps would be liberally distributed to approved public institutions.
- These may include educational institutions, hospitals, museums, shelters, jails, offices, transport corporations, public-sector enterprises, neighbourhood associations, urban local bodies, etc.
- These institutions would be free to use the stamps to hire labour for odd jobs and small projects that do not fit easily within their existing budgets and systems.
 1. The "service voucher" schemes popular in some European countries works the same way.
 2. But the difference is that they are used by households instead of public institutions, for the purpose of securing domestic services.
 3. The service vouchers are not free, but they are highly subsidised, and households have an incentive to use them.
- Wages, paid by the government, would go directly to the workers' accounts against job stamps certified by the employer.

- To avoid collusion, an independent placement agency would take charge of assigning workers to employers.

What are the advantages?

- The DUET approach would help in -
 1. activating a multiplicity of potential employers
 2. avoiding the need for special staff
 3. facilitating productive work, among others
- It would also ensure that workers have a secure entitlement to minimum wages, and possibly other benefits.
- Notably, there is no dearth of possible DUET jobs. Many states have a chronic problem of dismal maintenance of public premises.
- To work well, DUET would have to include some skilled workers (masons, carpenters, electricians and such).
- That would widen the range of possible jobs.
- It would also help impart a training component - workers could learn skills “on the job” as they work alongside skilled workers.

How about giving priority to women workers?

- This should not be like a minimum quota for women. Instead, as long as women workers are available, they should get all the work.
- In fact, women could also run the placement agencies, or the entire programme for that matter.
- To facilitate women’s involvement, most of the work could be organised on a part-time basis, say four hours a day.
- A part-time employment option would be attractive for many poor women in urban areas.
- It would give them some economic independence and bargaining power within the family, and help them to acquire new skills.
- Giving priority to women would have two further merits.
- First, it would reinforce the self-targeting feature of DUET.
- This is because women in relatively well-off households are unlikely to go (or be allowed to go) for casual labour at the minimum wage.
- Second, it would promote women’s general participation in the labour force.
 1. India has one of the lowest rates of female workforce participation in the world.
 2. According to 2019 National Sample Survey data, only 20% of urban women in the age group of 15-59 years spend time in “employment and related activities” on an average day.
 3. This stifles the productive and creative potential of almost half of the adult population of the country.

8.2 Father Stan Swamy - Rights of Prisoners with Disabilities

What is the issue?

- Father Stan Swamy, the 83-year-old activist (who suffers from Parkinson’s disease), lodged in Mumbai’s Talaja prison, was denied a sipper and straw.
- Denying a prisoner with disabilities his recognised rights is a legal wrong and a display of a lack of compassion.

What is the controversy over the sipper and straw?

- Fr. Stan Lourduswamy S.J., is an Indian Roman Catholic priest and a tribals rights activist for several decades.
- The 83-year-old activist was arrested by the National Investigation Agency (NIA) in October 2020.
- He is alleged to have involved in the 2018 Bhima Koregaon violence.
- He is charged under the Unlawful Activities (Prevention) Act, 1967.

- Father Swamy reportedly made an application to be provided with a sipper and straw as he was unable to hold a glass as he was suffering from Parkinson's disease.
- His request was inexplicably deferred for 20 days.
- The NIA later informed the court that it did not have a straw and sipper to give to him.
- The court has sought a report from the jail authorities on allowing Father Swamy to receive a straw and sipper at his own cost.
- However, subsequent reports said that Father Swamy had been provided with a sipper and straw by the jail authorities.
- Nevertheless, given Father Swamy's allegations, a fuller examination is merited by the court.

Why is it significant?

- The above events demonstrate the insensitivity of legal procedure.
- Apart from this, it outlines another fundamental issue which is the **rights of prisoners with disabilities**.
- While confinement/imprisonment itself is not easy, it is significantly more difficult for persons with disabilities.
- The difficulties persons with disabilities face in society are exacerbated in prison, given the nature of overcrowded and underfunded prison environments.
- It is precisely for this reason that both international and domestic laws recognise and protect the rights of disabled prisoners.

What are the laws in this regard?

- **UNCRPD** - Under international law, it is the UN Convention on the Rights of Persons with Disabilities (CRPD).
- It applies to all persons with disabilities including detainees and prisoners.
- It imposes a positive obligation on authorities, including prison staff, to ensure that prisoners with disabilities are -
 - i. on an equal basis with others
 - ii. entitled to guarantees in accordance with international human rights law
 - iii. treated in compliance with the objectives and principles of the convention, including by provision of reasonable accommodation
- The obligation encompasses the provision of auxiliary aids relevant to the disability.
- This is to secure the inherent dignity of the prisoner to enable them to live independently and participate in all aspects of their daily lives.
- In cases where such provision is not made by prison authorities, it may amount to a breach of a state's obligation.
- India is a signatory to this.
- **ICCPR** - The above obligations are complemented by the provision of Article 10 of the International Covenant on Civil and Political Rights (ICCPR).
- The Nelson Mandela Rules on the standard minimum rules for the treatment of prisoners was also approved by the UN through a resolution in 2015.

What are the legal provisions in India?

- The constitutional guarantees to persons with disabilities are available under Articles 14 and 21.
- Apart from this is the specific Indian legislation, the Rights of Persons with Disabilities Act, 2016.
- This was enacted with the objective of giving effect to the CRPD.
- This also requires that persons with disabilities enjoy the right to equality, life with dignity and respect for integrity equally with others.

- The Act also enjoins the state to take necessary steps to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.
- It also provides for taking necessary steps to ensure reasonable accommodation for persons with disabilities.
- The Act does not specifically provide for persons with disabilities who are incarcerated.
- However, given the object of the legislation to give effect to the CRPD, it would even encompass prisoners.
- Notably, the Act explicitly recognises Parkinson's disease as specified disability in its Schedule.

Why does Swamy's case need attention?

- The denial of aids such as a sipper and straw to Father Swamy is arguably inconsistent with both domestic and international law.
- The injustice in his case is magnified by the fact that he still awaits trial.
- The fundamental tenet on which Indian criminal law operates is that an accused is presumed innocent until proven guilty.
- His guilt or innocence is ultimately a matter for the court to decide.
- But the denial of his rights by the justice system not only constitutes a legal wrong but also displays an absence of compassion.

8.3 Treatment of Pre-Trial Political Prisoners

What is the issue?

- June 6 marks the third anniversary of the incarceration of five rights activists in the Bhima Koregaon conspiracy case.
- Here is a look at the case and the larger issue behind.

What is the Bhima Koregaon case?

- January 1, 2018 was the 200th anniversary of a battle fought at Bhima Koregaon, a small village in Pune.
- [It was where 500 Dalit Mahar soldiers of the British army defeated an army of the Peshwas.]
- Dalits converged in thousands from across the state for its commemoration.
- But [violence](#) broke out and one person died.
- Initially, the police investigated Hindutva leaders Milind Ekbote and Sambhaji Bhide for instigating the violence, and arrested Ekbote briefly.
- But some months later, the police claimed that the violence was a conspiracy by left activists and intellectuals.
- Five rights [activists were arrested](#) in this conspiracy case and eleven more were subsequently jailed for the same.
- These 16 women and men - the BK-16 accused - are intellectuals, lawyers, a poet, professors, cultural and rights activists.
- It includes an 84-year-old Jesuit priest, [Father Stan Swamy](#).
- All these persons have sterling records of service with India's most oppressed people.

Why is the case contentious?

- The charge against BK-16 was that they had conspired to instigate Dalits into violent insurrection, and to assassinate the Prime Minister.
- 3 years later, the trial against them has still not commenced.
- The state has succeeded in misusing the law with the complicity of all institutions of criminal justice.
- It worked to confine behind bars the BK-16 accused, without any opportunity for either bail or to prove their innocence.
- [After a tortuous court battle, just one of them, poet Varavara Rao, was granted bail because of his critically deteriorating health.]

- The evidence marshalled against the accused rests on some alleged emails.
- But independent agencies contest that these are malign insertions through malware.
- The case reveals the ease with which it is possible for the executive to undermine reputations of activists.
- It has imprisoned indefinitely without bail or trial, people who dissent and organise struggles against state policies.
- Many among the BK-16 are suffering from various kinds of illnesses.
- They are now housed in the overcrowded Taloja and Byculia jails, ideal sites for super-spreading the Covid virus.
- Above all, it is the agenda of the state to ensure that political prisoners are kept well.

8.4 Overcrowded Jails

Why in news?

Recently, the judgment of the Supreme Court in a bail petition has offered opportunity to look into the state of affairs of jails.

What is the case about?

- The imprisonment of a priest with Parkinson's disease and a senior academic suffering from a serious eye infection after contracting COVID-19, has exposed the overcrowded condition in the Taloja jail.
- As a result, the Bombay High Court has granted hospitalisation and medical check-ups to the prisoners but their pleas for interim medical bail was deferred.
- There is also a stark disparity between what the jail authorities say about the jail conditions and the evidence placed by the advocates for the undertrials.
- The conditions in several Indian prisons are pathetic with zero or next to zero monitoring by committees.
- Jails are overcrowded, have poor hygiene conditions, and has little or no statutory monitoring.

What was the verdict of the court?

- The SC urged the courts to actively use the option of house arrest in cases where age, health conditions and antecedents of the accused are a criterion.
- It expressed special concern over the overcrowding of jails — on an average at least 118 per cent higher than the limit.
- Following this order, the Calcutta High Court, in the case of three serving elected officials and ministers of the TMC-led Bengal government, ordered house arrest.
- The court even allowed them to perform some official duties under observation.

What is the global status of house arrest?

- In Medieval Europe, St Paul at the age of 60 was awarded house arrest for two years where he continued his profession as a tent maker and paid his own rent.
- Galileo Galilei, the Florentine physicist, philosopher and astronomer after a second trial in Rome in 1633 was confined to house arrest for the rest of his life.
- In more recent times in the West, some societies use it post-trial and conviction as confinement with surveillance.
- Elsewhere, house arrest has been used to repress political dissent before trial.

What is the case with India?

- Only a few governments have evolved any legal understanding around the issue of political prisoners.
- West Bengal has engaged with this issue and, in 1992, passed the West Bengal Correctional Services Act that provides for residence in correctional homes.
- Also, under Section 19(4), it has created a special categorisation of a prisoner as a political prisoner.
- Any offence committed or alleged to have been committed in furtherance of any political or democratic movement is regarded as a political offence.

What can we infer from this?

- The pandemic has highlighted the inhumane conditions present in the Indian prisons.
- House arrest as a punitive measure has been viewed differently depending on the socio-political context.
- Due to the poor conditions of Indian prisons and the absence of political will in proper monitoring, the option of house arrest must be seen as a positive opportunity.
- The familiarity of the undertrial with her or his place of residence and the ability to get prompt medical attention must surely bend courts towards actively using and implementing this as an option.
- In Independent India, house arrest can be used as a means of restricting movement and ensuring surveillance when an individual or groups of individuals are subject to preventive detention.

9. LABOUR ISSUES

9.1 SC Guidelines for Migrant Workers

What is the issue?

- The Supreme Court, in June 2021, pronounced its judgment in the migrant labourers case.
- While the guidelines laid down by the Supreme Court are welcome, they require robust systems to implement.

What is the case about?

- The case was initiated in 2020 after the national lockdown was announced.
- Thousands of landless labourers had started walking towards their home States.
- They faced loss of employment and income.
- The Supreme Court took cognisance of the matter.
- It rightfully acknowledged the plight of the workers in light of the strict lockdown.
- It laid down numerous guidelines to provide relief to workers and efficiently tackle the problem till the threat of COVID-19 subsides.

What are the key SC guidelines in this regard?

- Two key components to protect the migrants during this time were the food and travel arrangements.
- Under the National Food Security Act, migrant workers are issued ration cards.
- They are entitled to dry ration under various government programmes, such as the Atmanirbhar Bharat scheme, during the pandemic.
- In furtherance of the above, the court asked the States to formulate their own schemes and issue food grains to migrants.
- The Court laid down that dry ration be provided to migrants who want to return to their homes.
- Further, the court said that identity proof should not be insisted upon by the governments.
- The court also called upon the State governments to arrange transportation for workers who need to return to their homes.

What are the shortcomings?

- There are no normative data that would allow the States to identify eligible migrants to provide dry ration to them.
- The court took cognisance of this.
- It fixed July 31, 2021 as the deadline for the States to implement the 'One nation One Ration Card' scheme.
- And it thus directed the Ministry of Labour and Employment to ensure that the National Database for Unorganised Workers is updated by July 31.
- But it is unlikely that a standardised system can be developed within the deadline prescribed by the court.

- Apart from dry ration, the top court also directed the State governments to run community kitchens for migrant workers.
- However, there are administrative problems in implementing these measures.
- Migrant workers keep moving in search of employment.
- So, it is difficult to cover them all under the scheme.
- Also, many States do not have the necessary infrastructure to run and maintain community kitchens on such a large scale.
- The Court also recognised the need for direct cash benefit transfer to workers in the unorganised sector.
- But it did not issue any guidelines for the same as the workers need to be covered by the States themselves.

9.2 Draft National Policy on Migrant Workers

Why in news?

- NITI Aayog, along with a working subgroup of officials and members of civil society, has prepared a draft national migrant labour policy.
- This was spurred by the exodus of 10 million migrants (as per government estimates) from big cities during the Covid-19 lockdown.

What is the approach adopted?

- The draft describes two approaches to policy design:
 1. focussing on cash transfers, special quotas, and reservations
 2. enhancing the agency and capability of the community and thereby removing aspects that come in the way of an individual's own natural ability to thrive
- The goal is not to provide temporary or permanent economic or social aids", which is "a rather limited approach".
- The policy thus rejects a handout approach, opting instead for a rights-based approach.
- It seeks "to remove restrictions on true agency and potential of the migrant workers."

How should migration be dealt with?

- The policy emphasises that migration should be acknowledged as an integral part of development.
- Government policies should not hinder but seek to facilitate internal migration.
- This compares with the approach taken in the Report of the Working Group on Migration, released in January 2017.
- It was released by the then Ministry of Housing and Urban Poverty Alleviation.
- The report argued that the movement from agriculture to manufacturing and services was inherently linked to the success of migration in the country.

What are the concerns with the existing law?

- The 2017 report argued that specific protection legislation for migrant workers was unnecessary.
- It said that migrant workers should be integrated with all workers, covering regular and contractual work.
- The report discussed the limitations of The Inter State Migrant Workers Act, 1979.
 1. The 1979 Act was modelled on a 1975 Odisha law.
 2. The Act was designed to protect labourers from exploitation by contractors.
 3. It offered safeguards for their right to non-discriminatory wages, travel and displacement allowances, and suitable working conditions.
 4. However, this law covered only labourers migrating through a contractor. It left out independent migrants.
 5. The 2017 report questioned this approach, given the size of the country's unorganised sector.

- The report called for a comprehensive law for these workers, which would form the legal basis for an architecture of social protection.
- The NITI Aayog's policy draft too, mentions that the Ministry of Labour and Employment should amend the 1979 Act for "effective utilisation to protect migrants".

What are the key recommendations of the draft policy?

- The draft policy lays down institutional mechanisms to coordinate between Ministries, states, and local departments.
- The objective is effective implementation of programmes for migrants.
- It identifies the Ministry of Labour and Employment as the nodal Ministry for implementation of policies.
- The draft asks it to create a special unit to help converge the activities of other Ministries.
- This unit would manage-
 - i. migration resource centres in high migration zones
 - ii. a national labour Helpline
 - iii. links of worker households to government schemes
 - iv. inter-state migration management bodies
- Migration focal points should be created in various Ministries.
- **Inter-state migration management bodies** - Labour departments of source and destination states along major migration corridors should work together through the migrant worker cells.
- Labour officers from source states can be deputed to destinations.
- E.g. Bihar's experiment to have a joint labour commissioner at Bihar Bhavan in New Delhi
- **Need for data** - Both the 2017 report and the new draft stress the need for credible data.
- The draft calls for a central database to help employers "fill the gap between demand and supply."
- It would also ensure "maximum benefit of social welfare schemes".
- The draft policy asks the Ministries and the Census office -
 - i. to be consistent with the definitions of migrants and subpopulations
 - ii. to capture seasonal and circular migrants data
 - iii. to incorporate migrant-specific variables in existing surveys
- Both documents see limited merit in Census data that comes only once a decade.
- The 2017 report called on the Registrar General of India to release migration data no more than a year after the initial tabulation.
- It also suggests including sub-district level, village level, and caste data.
- It also asked the National Sample Survey Office to include questions related to migration in the periodic labour force survey, and to carry out a separate survey on migration.
- **Preventing exploitation** - The draft policy describes a lack of administrative capacity to handle issues of exploitation.
- State labour departments have little engagement with migration issues.
- The local administration, given the usual constraints of manpower, is not in a position to monitor migration.
- This has become the breeding ground for middlemen to thrive on the situation and entrap migrants.
- The draft points to the legal support and registrations tracking potential exploitation in Nashik and certain blocks in Odisha.
- It also flags the poor supervision of migration trends by anti-trafficking units in Chhattisgarh and Jharkhand.

What are the ways to stem migration?

- Even as it underlines the key role of migration in development, the draft recommends steps to stem migration.

- This is an important difference with the 2017 report.
- In this regard, the draft asks source states to raise minimum wages to “bring major shift in local livelihood of tribals.
- This may result in stemming migration to some extent”.
- The absence of community building organisations (CBO) and administrative staff in the source states has hindered access to development programmes.
- This has pushed tribals towards migration.
- The “long term plan” for CBOs and panchayats should thus be to alleviate distress migration.
- They should aim for a more pro-poor development strategy in the sending areas that can strengthen the livelihood base in these areas.
- Alongside the long-term goal, policies should promote the role of panchayats to aid migrant workers.
- Panchayats should maintain a database of migrant workers, issue identity cards and pass books.
- They should provide “migration management and governance” through training, placement, and social-security benefit assurance.
- Also, urban and rural policies should be integrated to improve the conditions of migration.

What are the other specific recommendations?

- The draft asks the Ministries of Panchayati Raj, Rural Development, and Housing and Urban Affairs to use Tribal Affairs migration data.
- This is to help create migration resource centres in high migration zones.
- It asks the Ministry of Skill Development and Entrepreneurship to focus on skill-building at these centres.
- The Ministry of Education should take measures under the Right to Education Act to -
 - mainstream migrant children’s education
 - map migrant children
 - provide local-language teachers in migrant destinations
- The Ministry of Housing and Urban Affairs should address issues of night shelters, short-stay homes, and seasonal accommodation for migrants in cities.
- The National Legal Services authority (NALSA) and Ministry of Labour should set up grievance handling cells.
- These should fast track legal responses for trafficking, minimum wage violations, and workplace abuses and accidents for migrant workers.

9.3 Women’s Employment Post-Pandemic – WFH

What is the issue?

- Women’ employment has fallen during the pandemic. Also, the quality of that employment has declined.
- In this context, here is an argument why not all women may benefit from the work from home (WFH) option being demanded by various quarters post the pandemic.

How is post-pandemic women workforce participation?

- Even before the pandemic, women’s participation in the workforce has always been low compared to the men’s.
- Only 9% of all women of working age were employed compared to 67% of men of working age.
- Now, the pandemic has hit women harder than men.
- Though only 11% of the workforce in 2019-20, they suffered 13% of the job losses in April 2020.
- To note, most women lost more of the top end jobs in the organised sector.
- They had to make up by taking jobs in the informal and gig economy.
- Urban, educated women’s employment declined more than that of rural women.

- The rural women continued to find work in the fields and on MGNREGA.
- But there too, women's participation has decreased, not only due to Covid-19, but also due to other economic and social factors.
- The boom in college and school going girls, especially in urban areas, has not been translated into a demographic dividend for the economy.

Has it improved after the lifting of the lockdown?

- The job market has recovered somewhat in January 2021 with women's employment increasing by 11.9 million.
- But the new employment is mostly in the lower end construction and agriculture sectors.
- Women's employment in the better paid manufacturing and service industries has not recovered to previous levels.
- The most-expected urban version of the MGNREGA which could have provided jobs for low income women was not included in the recent Budget.

Why is WFH option being demanded?

- The pandemic has necessitated the trend of working from home (WFH).
- This has offered some hope for women's employment.
- The reasons are saving of costs on office space, commuting costs, costs of meeting and so on.
- It is argued that WFH is likely to increase women's participation.
- This is because it can allow more women to combine their domestic duties with office work more seamlessly.
- This can also help overcome the cultural concerns of women's safety at the workplace and en route.
- Even before the lockdown, companies were outsourcing parts of the production to women who worked from home.
- E.g. Titan was outsourcing the production of watch parts, such as straps or dials to women or women's groups.

What are the shortcomings with this?

- Working from home might not be the best way to empower women.
- In any case it applies only to urban women in the organised sector.
 1. Neither agricultural work where women are employed to work in the fields, nor MGNREGA work can be done from home.
 2. The same applies to the work of Anganwadi or ASHA workers whose main responsibility is interaction with their charges.
 3. Nor will WFH positively affect women employed in the unorganised sector, working from home on craft production, handlooms, or selling vegetables etc. and the like.
- Though WFH or outsourcing may enable women to increase their income it will not empower them.
- Outsourced work can be exploitative since women cannot unionise or even resort to collective action.
- Being confined to the home and juggling domestic chores and paid work throughout the day is neither stimulating nor empowering for women.
- It only imposes a double burden.

What is a better way forward?

- Women need to leave the confines of their home.
- They must meet other work related people for their own mental and physical well being.
- Careers too are advanced through the networks formed during the work.
- Professional women at the higher end who prefer WFH may be able to periodically go to their workplaces or keep in touch with colleagues online.
- But this is not the case for lower end workers.

- For them, a model such as the Lijjat Papad cooperative is better.
- There, the women come together at a central place to collect raw materials and deliver the finished product. The actual production is done at home.
- It is a model which also allows for introduction of PPF (Public Provident Fund), health checks, or group insurance benefits.
- In all, WFH may certainly increase women's participation in the organised urban labour force.
- However, it may not be the case with all women, especially in the unorganised sector or lower end works.
- The end of the pandemic could thus see a mix of WFH and regular working.

10. POPULATION

10.1 U.P.'s New Population Policy

Why in news?

- Uttar Pradesh Chief Minister Yogi Adityanath launched the State's population policy for 2021-2030.
- Also, draft of the Uttar Pradesh Population (Control, Stabilisation and Welfare) Bill, 2021 was published earlier.

What are the key features of the policy?

- The new policy aims to achieve the following targets:
 - i. decrease the Total Fertility Rate from 2.7 to 2.1 by 2026 and 1.7 by 2030
 - ii. increase Modern Contraceptive Prevalence Rate from 31.7 to 45 by 2026 and to 52 by 2030
 - iii. increase male methods of contraception use from 10.8 to 15.1 by 2026 and to 16.4 by 2030
 - iv. decrease Maternal Mortality Rate from 197 to 150 to 98
 - v. decrease Infant Mortality Rate from 43 to 32 to 22
 - vi. decrease Under 5 Infant Mortality Rate from 47 to 35 to 25
- The state would attempt to maintain a balance of population among the various communities.
- Awareness and extensive programmes would be held among communities, cadres and geographical areas that have a higher fertility rate.

What does the draft bill propose?

- Under the draft bill, a two-child norm would be implemented and promoted.
- A person who will have more than two children after the law comes into force would be debarred from the benefits of government welfare schemes.
- Ration card units would be limited to four.
- The person will be barred from contesting elections to local authority or any body of the local self-government.
- Such persons would also become ineligible to apply for government jobs under the State government.
- They will be barred from promotion in government services and will not receive any kind of subsidy.
- The provisions would come into force one year after the date of publication of the gazette.
- The draft also proposes to incentivise one-child and two-child families.
- These include perks in government schemes, rebates in taxes and loans, and cash awards if family planning is done, among other sops.

What are the concerns?

- While the above intention is welcome, the government fails to take affirmative steps in that direction.
- It instead seems to have taken the path of a mixture of incentives and penalties.

- It is approaching the socio-economic issue as a demographic one.
- The incentives/disincentives approach has been denounced in the past by the National Human Rights Commission too.
- Also, empirical studies of coercive measures have shown such policies' discrimination against the poor and the marginalised.
- Studies have also found no discernible effect of such measures on population control.

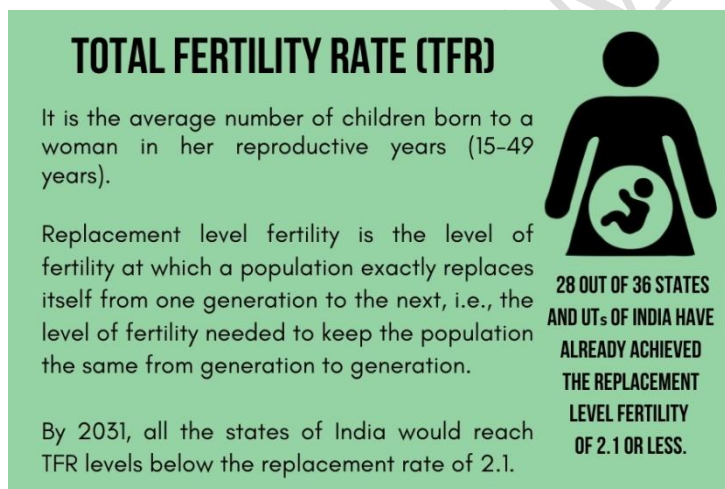
10.2 Declining Fertility Rates in India

Why in news?

The recently released empirical data from the National Family Health Survey 2019-20 (NFHS-5) shows that States and UTs are experiencing a sharp decline in fertility rates.

What does the fertility data show?

- Except for Bihar, Manipur and Meghalaya, the fertility rates have gone **below the replacement level of 2.1** children per woman.
- The TFR in Lakshwadeep and J&K have gone substantially below the replacement level with 1.4 children per woman.
- In all the 7 Northeastern states, the fertility rates range from 1.1 in Sikkim to 1.9 in Assam, except Manipur (2.2) and Meghalaya (2.9).
- Among populous states, the TFR has gone down to 1.6 children in West Bengal.
- It is only 1.7 each in Maharashtra, Karnataka, Himachal Pradesh and Andhra Pradesh.
- In Telangana and Kerala, the fertility rate is getting stabilised at 1.8 children per woman.
- Even in Bihar, where the TFR is 3, there is a relative decline in fertility from 3.4 in NFHS-4 (2015-16).



What are the key reasons for the decline?

1. Increase in female education levels
 2. Postponement of marriage
 3. Access to family planning methods / high contraceptive prevalence rate
 4. Declining infant mortality rate
 5. Declining neonatal mortality rate
- E.g., Bihar with the highest TFR of 3 - Maximum percentage of illiterate women at 26.8%
 - Kerala had among the lowest fertility rates - The literacy rate among women is 99.3%.
 - So, fertility rates are determined more by socio-economic factors and not religion. [There is a perception/myth that the fertility rates are higher among the Muslims.]

What does this call for?

- With sustained low TFR, the population will start shrinking as it is happening in countries like Japan, Germany and Russia.
- So, it would be odd to limit the family size anymore.
- The focus has to be on -
 - i. employment opportunities so that the "limited working population" in the near future is skilled enough
 - ii. meeting out the higher medical costs as the population ages and productivity shrink

- iii. having an affordable social security system that provides pension to the elderly
- On the other hand, States with higher fertility rates like Bihar and UP need to work on improving schooling, income levels, and reduce neonatal and infant mortality rates.

11. EDUCATION

11.1 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?

- **School education** - 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 enthrone the best universities abroad to set up campuses in India.

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

- 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.

NEP 2020 QUALIFICATION	
QUITTING AFTER 1ST YEAR	CERTIFICATE
QUITTING AFTER 2ND YEAR	DIPLOMA
QUITTING AFTER 3RD YEAR	BACHELOR'S DEGREE
COMPLETING 4 YEARS and if the student completes "a rigorous research project" in her major area(s) of study.	BACHELOR'S DEGREE "WITH RESEARCH"

11.2 Taking Forward the National Education Policy

What is the issue?

- It is one year since the launch of the National Education Policy 2020.
- For the NEP to move forward, there is need for more robust institutional mechanisms.

How has it performed so far?

- The NEP is essentially about learning through observation, listening, exploring, experimenting and asking questions.
- National boards have tried during the Covid year to bring in some changes in classroom transaction.

- The changes were in relation to well-being, inclusive education, joyful learning, a compilation of best teaching practices, assessment models etc.
- As a result of schools having closed down, the big shifts did not take place in areas of thematic learning or multiple pedagogical approaches.

What do the new challenges demand?

- Currently, there are huge learning gaps.
- Schools cannot be compared to institutions of higher education as needs of children are more personalised and cannot be addressed only online.
- With the extension of school closures and fear of infections, children are losing touch with understanding, comprehension, reading and speaking skills.
- There is a need for effective strategies to physically equip teachers and students.
- These include better tools in the classroom, increased access to laptops and other gadgets, interactive white boards, and fast and reliable internet access.
- Technology has not been able to touch the aspects of schools as a reflection of community, time, care and values.
- Beyond the technological limitations, parents do not have the time or ability to support their children in this venture.
- Only a fraction of students across the country have moved to online learning.
- This exposes the deep inequity in the system, and opens up a digital abyss.
- Students, teachers and other stakeholders are grappling with new technologies.
- This has led to a fragile learning system with implications for the implementation of the NEP and, in fact, education in general.

What are the changes required?

- A great deal of capacity building is required.
- Every stakeholder at the state, district, sub-district, block level has to have ownership and understanding of the concepts.
- Directorates of education have to be strengthened, for the policy to permeate to the district and zonal level educational clusters.
- Every teacher at the foundational, primary and middle school level should develop a sense of ownership for transformation to take place.

What is the right policy approach?

- The NEP is certainly extremely experiential; it cannot be brought in through online devices.
- Schools have to determine their capacity for restructuring, mobilising teachers, strategizing the operational needs required to navigate their understanding and implementation of the NEP.
- The state and national boards across the nation will have to start with pilot programmes.
- Creation of master trainers should be done who will train principals and teachers in urban and rural areas, replicating the model across all schools.
- For better implementation of the NEP, research, evaluation and documentation is essential.
- There also has to be coordination and convergence of the policy and programmes connected with it.

11.3 Higher education in regional languages

Why in news?

Indian policy's aim to empower the disadvantaged by turning the higher education multilingual has to be analyzed in the prism of internationalization of education

What are the recent developments in this regard?

- The National Education Policy (NEP) emphasized the use of regional languages for instruction at primary and higher education levels
- It has led to the launch of technical courses in five Indian languages by 14 engineering colleges for the new academic year
- There has been substantial demand for vernacular-language educational material in platforms like YouTube
- Several edtech startups have also tapped this market.

Yuelu Proclamation by UNESCO aims to protect linguistic resources and diversity

UNGA had proclaimed 2019 as the **International Year of Indigenous Languages**.



CONSTITUTIONAL SAFEGUARDS

Article 29 - Right of minorities to conserve their language

Article 120 - Right to members of Parliament to express themselves in their mother tongue

Article 350A - Facilities for instruction in mother-tongue at primary stage

Article 350B - Special Officer for linguistic minorities to be appointed by the President

Article 351 - Directive for development of the Hindi language

Schedule VIII of the Indian Constitution recognises 22 languages

What are the positive aspects of stressing on regional languages?

- Student enrollment will increase exponentially
- Will equip students to solve local problems with a global mindset
- Diminish the gap between the English-speaking population and those who speak in their mother tongues
- Positive impact on learning outcomes for students at schools
- Improved parental involvement and support in studies
- Promotes familiarity with the mother tongue
- Relevant for first-generation learners who are unfamiliar with the concepts in an alien language

What are the challenges lying ahead?

- Availability of study material such as textbooks and scholarly literature in regional language is rare.
- For this AICTE has launched an artificial intelligence-powered tool for translation
- Industry placement of graduates trained in regional languages is questioned which could further inhibit job opportunities
- It may sharpen India's language divide
- Availability of faculty for regional-medium courses is another bottleneck
- Regional-medium students may be unable to reap the benefits of internationalisation of education because of language barrier

- It may prevent students from competing in global labour and education markets.

What should be done?

- In the words of Vice-President Venkaiah Naidu, we need to move from a “mother tongue versus English” paradigm towards a “mother tongue plus English” approach
- A holistic approach with deep deliberation is needed in an increasingly globalized world

11.4 Foreign Language Learning in Government Schools – Punjab

Why in news?

Punjab CM Amarinder Singh has directed the Education Department to explore all possibilities to have foreign languages as optional subjects for students of government schools.

What was a similar move earlier?

- Earlier in 2018, Amarinder had said that Mandarin Chinese would be offered to senior secondary classes in government schools.
- This was because “China was emerging as the most significant neighbor” and it was “need of the hour to learn their language”.
- However, the project could not take off even as Education Department started looking for qualified instructors.

What is the rationale for the current directive?

- Punjab is a state where majority of youths live with NRI dreams and are keen to learn foreign languages.
- They mostly move to countries such as Canada, Australia, and New Zealand among others.
- Most students in Punjab government schools come from rural background.
- They face difficulty in speaking and writing English language.
- This is largely due to weak basic skills acquired at primary level.
- Later, clearing the IELTS exam becomes a challenge, which is mandatory for moving to countries such as Canada.
- The government school students are mostly not in position to afford private tuition/coaching facilities to learn other languages or even English.
- So, if students are taught at least one foreign language, it would improve chances of their employability across the globe.

How is it being planned?

- The Education Department has been asked to explore all possibilities to offer languages such as ‘French, Chinese, Arabic’ to the students.
- The plan so far is to start online classes after tying up institutes/coaching centers.
- Students can opt whichever language they want such as German, Chinese, and French etc.
- This will be completely optional, and not compulsory.
- Besides, a batch of at least 15 government school teachers from Punjab is currently undergoing training in Japanese language.
- [They are being trained under state’s Skill Development Mission to create taskforce that can be eligible for jobs being offered by Japanese firms under ‘Invest Punjab’ programme.]
- These teachers are being trained as ‘master trainers.’
- They would further train students in Japanese, who want to apply for jobs with Japanese companies that are expected to invest in Punjab.

How is elementary level education generally?

- Various reports including the annual ASER have highlighted that elementary reading, writing and arithmetic skills elude a substantial section of children even after spending 8 to 10 years in school.

- Local administrative agencies rarely take ownership of the education crisis.
- So, policies to address pedagogic deficits do not attain the desired results.

How has Punjab dealt with it?

- Amidst the above condition, Punjab topped the recent National [Performance Grading Index](#) in school education for 2019-20.
- The state topped, on the back of a school revamping initiative by its education department.
- It is the brainchild of the state's education secretary.
- The programme has rationalised teacher posting, ramped up infrastructure and made optimum use of both analogue and digital avenues.
- The project has converted 67% of the government-run schools into smart schools.
- But it is not totally technology-centred; school spaces such as doors, windows and classroom floors now serve as learning resources.
- The State witnessed a 15% increase in government school enrolment in the current year, amidst the pandemic.
- Punjab's reforms hold lessons for other states too.

11.5 Performance Grading Index

Why in news?

The Education Ministry recently released the latest edition of the Performance Grading Index (PGI).

What is the Index for?

- The Education Ministry released the first PGI in 2019 for the reference year 2017-18, to measure the performance of states in school education.
- The objective is to help the states prioritise areas for intervention in school education.
- States are only graded and not ranked.
- This is to avoid discouraging the practice of one improving only at the cost of others and casting a stigma of underperformance on some.

How does it work?

- The PGI assesses states' performance in school education based on data drawn from several sources including
 - i. the Unified District Information System for Education Plus
 - ii. National Achievement Survey
 - iii. Mid-Day Meal
- States are scored on a total of 1,000 points across 70 parameters.
- The parameters are grouped under five broad categories:
 - i. access (eg. enrolment ratio, transition rate and retention rate)
 - ii. governance and management
 - iii. infrastructure
 - iv. equity (difference in performance between scheduled caste students and general category students)
 - v. learning outcomes (average score in mathematics, science, languages and social science)
- The PGI grading system has 10 levels.
- Level 1 indicates top-notch performance and a score between 951 and 1,000 points.
- Level II, also known as Grade 1++, indicates a score between 901 and 950.
- Level III, or Grade 1+, indicates a score between 851 and 900.
- The lowest level is Grade VII, and it means a score between 0 and 550 points.

What are the highlights of the recent Index?

- In PGI 2019-20 too, no state/UT could achieve the highest grade/Level I, same as in 2017-18 and 2018-19 editions.
- Chandigarh, Punjab, Tamil Nadu, Andaman and Nicobar and Kerala have scored more than 90%.
- They have obtained Grade 1++ (or Level II), which makes them the best performing states.
- This is the first time that any state has reached Level II.
- Only the UT of Ladakh has been placed in the lowest grade, that is Grade VII.
- But this is because it was the first time it was assessed after it was carved out of J&K in 2019.
- **Progress** - A total of 33 States and UTs have improved their total PGI score in 2019-20 as compared to 2018-19.
- However, there are still 31 states/UTs placed in Level III (Grade 1) or lower.
- The biggest improvement in PGI this year has been shown by Andaman and Nicobar Islands, Punjab, and Arunachal Pradesh.
- All three have improved their score by 20%.

What are the key areas demanding attention?

- In 'Governance Processes' domain, 24 States/UTs have scored less than 288 (80% of the maximum possible score).
- It carries parameters such as teacher availability, teachers training, regular inspection, and availability of finances.
- States and UTs need to improve in this, and the PGI too accords the highest importance to this Domain.
- This is because compliance in this domain will improve other areas including monitoring teachers' attendance, and transparent recruitment.
- The second area that requires attention is the Domain for Infrastructure and facilities.
- Here, 20 States/UTs have scored less than 120 (80% of maximum possible score in this domain).
- Two States, Bihar (81) and Meghalaya (87) recorded lowest scores in this domain.
- This is a cause for concern, as a proper school building with adequate facilities is essential to improve the overall quality of school education.

11.6 UGC's Proposal on Blended Teaching

Why in news?

The University Grants Commission (UGC) has made a proposal to encourage "blended teaching" in higher educational institutions.

What is the rationale?

- UGC claims that the move seeks to "liberate" students.
- The present teaching is top-down, teacher-centric, and one-size-fits-all.
- It ignores the diversity of students.
- A blended approach would -
 - i. provide students autonomy
 - ii. instil a disposition of self-advocacy
 - iii. promote student ownership
- It would enable students to learn at their own pace.
- Teachers would become coaches and mentors instead of merely knowledge providers.

BLENDED TEACHING

- It effectively means replacement of face-to-face teaching with online teaching.
- UGC recommends that 30% of courses would be online initially.
- The aim is to eventually make it to 70%.
- UGC called for feedback from public domain.



What is the similar move made earlier?

- The massive online open courseware or MOOCs were introduced in 2012.
- This was seen as a potential replacement of physical campuses.
- MOOCs failed to persuade universities in the USA to accept them.
- But in India, universities are already being pushed to teach courses available on the Swayam MOOC platform.

What are the concerns and how should universities be?

- Online courses could not replace face-to-face interaction between students and teachers.
- The right of the faculty to develop their own courses and pedagogy cannot be taken away.
- Higher education institutions are not only about students.
- They are also meant to be a space for teachers.
- Teachers are not merely knowledge providers but are also knowledge creators.
- What happens on the campuses is dialogue.
- By interacting with generations of students and colleagues, one learns to think.
- And thinking does not happen in isolation.
- The student must have an opportunity to be in the company of differences and disagreements.
- Especially in the context of India, a key role of universities is to help democratise society.
- The campuses give the youth relative freedom from the shackles of communities they come from.

What are the other apprehensions?

- The move is seen as a measure to cut costs in higher education.
- The last 7 years have seen a gradual reduction in the budget allocations for higher education.
- The new proposal is a way of cutting the number of teachers in the name of liberating students.
- This proposal also refuses to acknowledge the huge digital divide that exists in India.
- It would certainly affect poor students and those from the SC, ST communities the most.
- Also, a centralised body like the UGC would attempt to impose its own selection of courses on all the universities in the name of uniformity.
- In all, reducing the role of the universities to merely enable the transaction of a pre-cooked syllabi is to ignore their larger and more important purpose.
- Universities in India are historically seen as places where political citizenship is shaped.
- Marginalising this idea and seeing students as consumers of “knowledge” is unwelcome.

11.7 Tamil Nadu's case against NEET

Why in news?

The latest Bill passed by Tamil Nadu Assembly exempting the State from the NEET for admission to UG medical courses was returned by the President of India without his assent.

What is the background of NEET?

- The **Indian Medical Council (IMC) Act** states that there shall be a uniform entrance examination to all medical educational institutions at UG level and PG level through such designated authority.
- Union government issued an Ordinance in 2016 postponing the introduction of NEET to 2017 due to the opposition from many quarters.

What is Tamil Nadu's stand on NEET?

- Tamil Nadu government issued an order in 2017 providing for the reservation of 85% of the seats for students passed out from the State board which was struck down by the Madras High Court.

- Later the State government had brought in a law providing **7.5%** reservation in medical seats, but with NEET as a criterion.
- Tamil Nadu government had appointed a committee under **Justice A.K. Rajan** to look into the question of desirability of having an examination as a prerequisite for MBBS admissions.
- **Views of the committee:**
 1. Majority were not in favour of the NEET requirement
 2. Higher secondary examination of the State board itself was good enough for the selection of students for MBBS seats.
 3. NEET only worked against underprivileged government school students, and had profited coaching centres and rich.
- So, Tamil Nadu government amended the central act assuming that medical college admissions will come under Concurrent List (Entry 25 of List III) for which assent has not been given by the President.

What is the dilemma now?

- The question is whether the State government can exempt Section 10D of the IMC Act, which is a parliamentary law that falls under the Central List (Entry 66).
- The introduction of internal reservation for government school students is also under challenge before the Madras High Court.
- No other State in India has sought an exemption from NEET and therefore the possibility of exempting Tamil Nadu is low.
- Also, if exempted, the fate of **all-India quota of 15%** and the condition of Tamil Nadu students who do not avail this quota by not writing the exam is a question.
- Tamil Nadu government is of the view to conceive a better system with a fair admission process preserving merit and preventing rampant commercialisation.

11.8 EdTech needs an Ethics Policy

What is the issue?

The lack of a regulatory framework in India has affected the privacy of students who use educational technology (EdTech) apps for learning.

Why EdTech became popular?

- Since the onset of the pandemic, online education has replaced conventional classroom instruction.
- This has spawned several EdTech apps which are now becoming popular.
- Schools and colleges moved their content delivery, engagement and evaluation from offline to online to ensure minimal academic disruption.
- The EdTech apps have the advantage of being able to customise learning to every student in the system.

How data is collected from this apps?

- To perform the process of learning customisation, these apps collect large quantities of data from the learners through the gadgets that the students use.
- These data are analysed in minute detail to customise learning and design future versions of the app.
- The latest mobile phones and hand-held devices have a range of sensors like GPS, gyroscope, accelerometer, magnetometer and biometric sensors apart from the camera and microphones.
- These provide data about the learner's surroundings along with intimate data like the emotions and attitudes experienced and expressed via facial expressions and body temperature changes.
- In short, the app and device have access to the private spaces of the learner that one would not normally have access to.

How is privacy being affected?

- In the EdTech industry, where investments are pouring in, researchers and app developers are being pushed to be as intrusive as possible.

- The safeguards that traditional researchers are subject to are either missing or minimal in research that the EdTech industry promotes.
- Children use these apps without parent or adult supervision and the intrusion of privacy happens unnoticed.
- Further, there is no option to stop using the app without some repercussions.
- Since India does not have protection equivalent to the GDPR, private data collected by an EdTech company can be misused or sold to other companies with no oversight or protection.
- In 2014, study titled 'Experimental evidence of massive-scale emotional contagion through social networks', tell us the vulnerability of data theft.
- It revealed that Facebook manipulated the emotions of 7,00,000 users by changing the type of posts that were shown to the user.

What can we infer from this?

- Given these realities, it is necessary to formulate an ethics policy for EdTech companies through the active participation of educators, researchers, parents, learners and industry experts.
- Such a policy draft should be circulated both online and offline for discussions and criticism.
- Issues of fairness, safety, confidentiality and anonymity of the user would have to be correctly dealt with.
- EdTech companies would have to be encouraged to comply in the interest of a healthier learning ecosystem.

11.9 Pandemic and Academic Future

What is the issue?

- The pandemic gave administrators an opportunity to re-examine the education system, but nothing has changed.
- With the second wave of the pandemic, it is crucial to reflect on the past gaps and make appropriate course corrections.

How was the response?

- Bureaucrats and administrators associated with educational institutions came up with notifications and circulars.
- They were supposedly designed to enable academic activity.
- But these orders disregarded the distress experienced by the academic community.
- The unrealistic 'one order fits all' approach established the distress as a new feature of educational institutions.
- The response should have helped institutions, faculty and students overcome the uncertainties.
- But the biggest failure of the administrative response was that instead of doing the above, the focus was on unnecessary bureaucratic centralisation.

What was the lost opportunity?

- The pandemic offered an opportunity to initiate sustainable reforms in the structure of the academic term and the nature of continuous assessment.
- It provided an opportunity to -
 - i. work with teachers to address their concerns
 - ii. encourage better student-teacher interactions
 - iii. develop a better framework to determine the qualificatory grade for students to move to the next stage of study
- But instead, the administrators showed rigid insistence on rote learning.
- They refused to recognise the fact that marks obtained in exams are not the only markers of a student's capabilities.
- They also showed reluctance to engage with fellow academicians and teachers to nurture academic engagement.

- All these ended up becoming a source of public distress.
- The exam system, which has been crying out for significant overhaul, could have been reformed, but was missed.
- The revised academic calendars introduced in 2020 undermined proper and constructive academic interaction between teachers and students.
- While teachers conducted online classes daily, administrators were obsessed with monitoring them.
- They showed little interest in enquiring about the health and difficulties of their colleagues and staff.
- They failed to consider initiatives to assess the mental health of teachers, non-teaching staff and students.
- At times it seemed as if they did not fully understand the qualitative and operational differences between online and offline classes.
- The practice exposed the outdated understanding of technology and lack of understanding of the contemporary challenges of classroom interactions.

What is the challenge now?

- The second wave is now occurring at a time when students in schools and higher educational institutions transition from one level to another.
- This has exposed the administrative inadequacies of the past year.
- It is becoming obvious that the pandemic would disrupt the academic schedule for more than 2 years.

What is the way forward?

- There is a pressing need for bureaucratic administrators to consult academic stakeholders and move ahead.
- It is time for institutions to reconsider their approach towards exams and grading.
 1. The need is to reduce the pressure on the students and discourage them from memorising to prepare for set and repetitive exam questions.
 2. Attention should be given to continuous assessment and evaluation of students.
 3. A system geared to assess the students' understanding rather than ability to memorise and reproduce should be in place.
 4. School boards and universities need to alter the pattern of question papers.
 5. The idea of open book examinations needs to be developed.
- The decision-makers in educational institutions will need to display administrative acumen and show willingness to learn from mistakes.
- The bureaucracy must recognise that universities and schools have their own academic considerations.
- They should understand that the standardisation of academic requirements, calendars, and teaching and learning processes are not feasible.
- The decisions should not be knee-jerk responses such as cancelling and/or postponing exams and remaining fixated with the completion of the academic term.
- Decisions taken should help secure the academic future of students, teachers and institutions.

11.10 Excellence in Diversity

Why in news?

IIT's are facing shortage of qualified faculty members.

Why there is shortage of faculties in IIT's?

- Last year, IIT Delhi had 30% deficit in its teacher ranks & currently in India 23 such institutes faces the same issue.
- The number of students rose significantly after reservation was extended to students belonging to Other Backward Classes.

- But recruiting the faculties should meet quota norms as mentioned in **Central Educational Institutions (Reservation in Teachers' Cadre) Act, 2019**.
- The act aims to fulfil the goal of affirmative action while making appointments.

What are the steps taken to address this issue?

- A committee was formed by the Education Ministry to suggest effective implementation of reservation in central institutions.
- It suggested that IITs should be exempted from the quota list.
- Reservation should be provided to specified grades of assistant professors by taking the institution as a whole.
- If suitable candidates are not available, the posts can be de-reserved in the subsequent year.

What is the way forward?

- Compensatory discrimination in favour of some classes of citizens is necessary to correct historical distortions.
- Massive investments should be in the education system & at all levels to raise the capability of students.
- Government should sponsor a preparatory programme at the IITs for the eligible reserved candidates to get acquainted with high quality academic work.
- They can optionally prepare for a PhD if they aspire to be teachers.
- This will not only help to fill vacancies in the IITs but also aid the institutions to achieve research excellence.
- To achieve progressive redistribution, equal opportunity & strong, liberal public school system should be provided.
- This will strengthen diversity and lay the foundation for the kind of scholarship that institutions of excellence need.
- An early decision must be taken by the government without sacrificing equity principles to address this issue.

11.11 Implications of Ignoring Schooling

What is the issue?

- Amidst the various ups and downs, lockdowns and unlocks during the pandemic, one (near) constant feature has been the closure of schools.
- It is crucial now to realize that ignoring schooling would have long-term implications.

What is the current scenario?

- In the recent past, there have been big rallies, protests, social and religious festivities (on a reduced scale though).
- Besides these are crowded markets, busy roads and almost every activity.
- There have been some attempts such as conduct of entrance tests and optional attendance by some pupils in.
- But barring these, schools have remained shut and out of reach for most.
- Various states have attempted to reopen schools, with limited successes due to the resurgence of the virus.
- The recent attempts will also face obstacles, possibly lead to a rise in local infections, and other disruptions.

How different have the approaches been?

- In the 9 months since March 2020, human interaction in the real world has become a scare resource.
- Different societies have chosen to act differently in this respect.
- The European model has been to keep schools running as much as possible, with great innovations.
- Denmark and Norway opened schools early in April/May in a staggered manner, and this did not lead to a second or third wave of infection.
- In the UK and Germany, schools reopened in August/September, and it was not smooth sailing for them.
- Some schools had to be closed temporarily while some (in Germany) adopted mass testing.

- The UK opted for a second nationwide lockdown in the first week of November but announced its resolve to keep schools open.
- In all, several countries in Europe, essentially, chose schools over non-essential business.

What does this signify?

- The incidence of infection, the school support systems and budgetary burdens are different.
- However, the above examples should not be dismissed on the ground that these were developed countries.
- It can be argued that they are developed because they consider schooling to be an essential activity.
- They are doing their utmost to see students do not lose out.
- In fact, the UK's education minister made it clear that "continuity of education is a national priority."
- The government was threatening to take action against a local council which had ordered closure of schools.

What are the challenges in India's case?

- There are several factors, apart from intent, that makes keeping schools open so hard in India.
- For example, average distance travelled by a student and the density of student population in any school are high.
- This makes it difficult to safeguard against the spread of the infection.
- Schools can bring in changes in terms of class arrangements, staggered lunch hours, reduction in physical sports, limited social interactions and year-group bubbles.
- But they cannot control what happens outside their premises.
- On the other hand, more than these logistical factors, there are some key issues that need attention.

What are the long-term changes needed?

- **Decentralisation** - The school system needs more decentralisation both in terms of governance and planning.
- Not all decisions need to be taken at the national or state level.
- Local councils or districts could have chosen to stay open, depending on the spread of the disease, their local needs and capabilities.
- **Social needs** - Inequality in educational capability has been exacerbated due to the closure of institutions during the pandemic.
- So once schools across the country reopen, it cannot be simply teaching as usual.
- Schools need to reassess the needs of their pupils and do utmost to attend to these.
- **Teaching methods** - Teaching practices at schools have a sizeable impact on a student's social capital.
- There are differences between the vertical method and the horizontal method.
- In the former, the teacher lectures and students take notes and ask questions.
- In the latter, students work in groups and ask questions to each other and the teacher.
- It is learnt that in societies where the horizontal method is predominant, generalised levels of trust in the society are likely to be higher.
- Students under the vertical system are also likely to have lower assessments (belief) of the value of cooperation.
- Essentially, trust and cooperation affect the long-term growth of an economy.
- In India, the method is more inclined towards the vertical method, where online classes are viewed as close substitutes of classroom experience.

11.12 Nursing Education

What is the issue?

- The year 2020 has been designated as “International Year of the Nurse and the Midwife”.
- Nursing education in India suffers poor quality of training, inequitable distribution, and non-standardised practices; needs serious reforms.

What are the shortfalls?

- **Workforce** - India's nursing workforce is about two-thirds of its health workforce.
- Its ratio of 1.7 nurses per 1,000 population is 43% less than the World Health Organisation norm.
- India needs 2.4 million nurses to meet the norm.
- **Uneven regulation** - Nursing education in India has a wide array of certificate, diploma, and degree programmes for clinical and non-clinical nursing roles.
- The Indian Nursing Council regulates nursing education through prescription, inspection, examination, and certification.
- However, the induction requirements vary widely and so does the functioning of regulatory bodies in the States.
- In addition, 91% of the nursing education institutions are private and weakly regulated.
- The quality of training of nurses is diminished by the uneven and weak regulation.
- **Institutions** - The number of nursing education institutions has been increasing steadily.
- But there are vast inequities in their distribution.
- Around 62% of them are situated in southern India.
- **Education** - The current nursing education is outdated and fails to cater to the practice needs.
- The education, including re-training, is not linked to the roles and career progression in the nursing practice.
- Multiple entry points to the nursing courses and lack of integration of the diploma and degree courses diminish the quality of training.
- **Postgraduate courses** - There are insufficient postgraduate courses to develop skills in specialties.
- On the other hand, despite the growth, there is little demand for postgraduate courses.
- Recognising the need for specialty courses in clinical nursing 12 post graduate diploma courses were rolled out.
- These courses never did well due to lack of admissions, because the higher education qualification is not recognised by the recruiters.
- Further, the faculty positions vacant in nursing college and schools are around 86% and 80%, respectively.
- These factors have led to gaps in skills and competencies, with no clear career trajectory for nurses.

How do these reflect in practice?

- Most nurses working in the public and private health sector are diploma holders.
- There is a lack of job differentiation between diploma, graduate, and postgraduate nurses regarding their pay, parity, and promotion.
- Consequently, higher qualifications of postgraduate nurses are underutilised, leading to low demand for postgraduate courses.
- Further, those with advanced degrees seek employment in education institutions or migrate abroad where their qualifications are recognised.
- This has led to an acute dearth of qualified nurses in the country.
- Compounding the problem, small private institutions with less than 50 beds recruit candidates without formal nursing education.
- They are offered courses of 3 to 6 months for non-clinical ancillary nursing roles and are paid very little.

- The above issues have led to the low status of nurses in the hierarchy of health-care professionals in the country.
- These disruptions are more relevant than ever in the face of the COVID-19 pandemic.

How efficient are the regulatory provisions?

- The nursing practice remains largely unregulated in the country.
- The **Indian Nursing Act** primarily revolves around nursing education.
- It does not provide any policy guidance about the roles and responsibilities of nurses in various cadres.
- Nurses in India have no guidelines on the scope of their practice and have no prescribed standards of care.
- The mismatch of the role description and remuneration that befits the role sets the stage for the exploitation of nurses.
- It is a major reason for the low legitimacy of the nursing practice and the profession.
- All these may significantly endanger patient safety.
- **Patient safety** - The Consumer Protection Act protects the rights and safety of patients as consumers.
- But this holds only the doctor and the hospital liable for medico-legal issues; nurses are out of the purview of the Act.
- This is contrary to the practices in developed countries where nurses are legally liable for errors in their work.

What are the much needed reforms?

- Nurses and midwives will be central to achieving universal health coverage in India.
- The governance of nursing education and practice must be clarified and made current.
- The Indian Nursing Council Act of 1947 must be amended to –
 - i. explicitly state clear norms for service and patient care
 - ii. fix the nurse to patient ratio, staffing norms and salaries
- The jurisdictions of the Indian Nursing Council and the State nursing councils must be defined and coordinated to synergise their roles.
- Qualified nurses leaving the country for lack of recognition and work opportunities must be contained.
- Incentives to pursue advanced degrees to match qualification, clear career paths, opportunity for leadership roles, and improvements in the status of nursing as a profession are other priorities.
- A live registry of nurses, positions, and opportunities should be a top priority to tackle the demand-supply gap in this sector.
- Public-private partnership between private nursing schools/colleges and public health facilities would help enhance nursing education.
 - i. The NITI Aayog has recently formulated a framework for public-private partnership in medical education.
 - ii. This could be referred to develop a model agreement for nursing education.
 - iii. The Government has also announced supporting such projects through a Viability Gap Funding mechanism.
- The following would significantly streamline and strengthen nursing education:
 - i. a common entrance exam
 - ii. a national licence exit exam for entry into practice [for persons with a foreign medical qualification, to obtain licence to practice here]
 - iii. periodic renewal of licence linked with continuing nursing education
- Transparent accreditation, benchmarking, and ranking of nursing institutions too would improve the quality.
- The National Nursing and Midwifery Commission Bill currently under consideration should hopefully address some of the above issues.

11.13 Stanford Ranking

Why in news?

According to Stanford University Report, about 1,594 Indians have made to the list of top 2% scientists in the world.

What are the highlights of the report?

- Ranking is based on standard indicators such as information on citations, h-Index, co-authorship and a composite indicator.
- Among the institutions of national importance, several scientists from IISc, Bangalore, ISI, Kolkata, and IITs & NITs have made it to the top.
- More than four-fifths of the scientists are from government-supported institutions.
- In the disciplines of S&T, share of scientists from government-supported national important institutions is high.
- In disciplines of Medicine & allied areas, scientists from private institutions are doing well.
- There is an equitable distribution of scientists working in institutions in urban and rural areas.
- Several institutions located in remote areas — much away from the ‘urban hubs of education’ — are in the list.

What do we infer from this report?

- Freedom, flexibility and facilitation to the faculty to carry out research on any relevant topic has helped to improve the rank.
- The practices of peer review, motivation to participate in international seminars, and incentivisation packages offered in the institutions had a positive impact in the ranking.
- Scientists are performing well beyond the centres of excellence.
- This is reflected from the fact that scientists from private colleges are finding the place in the ranking.
- There is professional excellence and equitable sharing of excellence in the rural and urban settings.
- However, it is disappointing to note that only a few scientists in disciplines such as anaesthesiology, applied mathematics, emergency and critical care, genetics and heredity and geology have made the grade.

How can India further improve its performance?

- Currently, India invests less than 1% of its GDP in research and innovation.
- The proposal to set up **National Research Foundation** (NRF) will boost the overall research ecosystem in the country by focusing and extending support to take up R&D in thrust areas relevant to India's national priorities.
- NRF will have 4 major divisions such as sciences, technology, social sciences, and arts and humanities.
- Additional divisions such as agriculture, environment, etc. will be added subsequently for conducting research beyond conventional disciplines.
- This paves way for a self-reliant India while advocating merit-based, equitable peer-reviewed research funding, incentivised research, and a new culture of R&D in the country.
