

LEGAL AFFAIRS

(SEPTEMBER-NOVEMBER 2021)

#CENTRE ROLLED BACK FARM LAWS

Recently, the Prime Minister announced the **repeal of the three contentious farm laws**.

- The **Parliament** (Lok Sabha + Rajya Sabha + President) has the authority to **enact, amend, and repeal any law**.
- The farm laws had witnessed **protests from farmers**, mainly from Punjab and Haryana, on the borders of Delhi for more than a year.



Three Farm Laws:

- **Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020:** It is aimed at allowing trade in agricultural produce outside the existing **APMC (Agricultural Produce Market Committee)** mandis.
- **Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020:** It seeks to provide a framework for contract farming.
- **Essential Commodities (Amendment) Act, 2020:** It is aimed at removing commodities such as cereals, pulses, **oilseeds, edible oils**, onion and potato from the list of essential commodities.

Reason for Enacting the Laws:

- There has been a **long-pending demand** for reforms in agricultural marketing, a **subject that comes under the purview of state governments**.
- The Centre **took the issue up in the early 2000s** by pushing for reforms in the APMC Acts of the states.
- The Agriculture Ministry under the then government **designed a model APMC Act in 2003 and circulated it among the states**.
- The subsequent government, too, pushed for these reforms. But given that it is a state subject, **the Centre has had little success in getting the states to adopt the model APMC Act**.
- It was in this backdrop that the government went for reforms in the sector by passing these laws.

Reasons Behind Farmers Protest:

- **Repealing the farm laws:** The first and foremost demand of the protesting farmers' organisations is the **repeal of three new agricultural laws**.
- As per the farmers the law is framed to **suit big corporations who seek to dominate the Indian food and agriculture business** and will **weaken the negotiating power of farmers**. Also, big private companies, exporters, wholesalers, and processors may get an edge.
- **Minimum support price:** The second demand of farmers is the **guarantee of Minimum Support Price (MSP)** to ensure procurement of crops at a suitable price.
- The Farmers are also demanding to get a written assurance in the form of a Bill for the continuation of the MSP and conventional food grain procurement system.
- The Farmers' organisations want the APMC or the Mandi System to be protected.

- **Electricity (Amendment) Bill:** The third demand of farmers is the **withdrawal of the Electricity (Amendment) Bill**, as they feel that they won't get free electricity due to this.
- **Swaminathan Commission:** The Farmers are demanding MSP as recommended by the Swaminathan Commission.
- The **Swaminathan Commission Report states that the government should raise the MSP to at least 50% more** than the weighted average cost of production. It is also known as the C2+ 50% formula.
- It includes the imputed cost of capital and the rent on the land (called 'C2') to give farmers 50% returns.

Staying the Implementation:

- The **Supreme Court** stayed the implementation of the three laws in January 2021.
- The **farm laws were in force for only 221 days** — June 5th 2020, when the ordinances were promulgated to January 12th 2021, when the Supreme Court stayed their implementation.
- Since the stay, the **laws have been suspended**. The government has used old provisions of the **Essential Commodities Act, 1955** to impose stock limits, having amended the Act through one of the three farm laws.

Impacts of Repealing the Law:

- **Need of Consultation:** The repeal underlines that any future attempts to reform the rural agricultural economy would require a **much wider consultation**, not only for **better design of reforms, but for wider acceptance**.
- The repeal would leave the government hesitant about pursuing these reforms in stealth mode again.
- The government will doubtless have to walk the path of reform very cautiously.
- **Low Farmers Income:** Given that the **average holding size stands at just 0.9 ha (2018-19)**. Unless one goes for **high-value agriculture** — and, that's where one needs **efficient functioning value chains from farm to fork** by the infusion of private investments in logistics, storage, processing, **e-commerce**, and digital technologies — the incomes of farmers cannot be increased significantly.
- **Negative Impact on Industries:** Industries including **logistics, cold chain, agri-related, and farm equipment would be impacted the most** because they were supposed to be the direct beneficiaries of these laws.
- **Constant Agri-GDP:** The **agri-Gross Domestic Product (GDP)** growth has been **3.5% per annum in the last 14 years**. One expects this trend to continue — there might be minor changes in the agri-GDP depending on rainfall patterns. **Cropping patterns** will remain skewed in favour of rice and wheat, with the granaries of the **Food Corporation of India** bulging with stocks of grain. The food subsidy will keep bloating and there will be large leakages.

#ALLAHABAD HIGH COURT ON UNIFORM CIVIL CODE

Recently, the Allahabad High Court has **called upon the Central government to initiate the process for implementation of Uniform Civil Code (UCC).**

- The court's direction came in the context of a bunch of **17 petitions** filed by interfaith couples, who contracted marriage upon conversion, seeking protection of their life, liberty and privacy guaranteed under **Article 21** of the Constitution.
- **Background - New Anti-Conversion Law:** The Government of Uttar Pradesh has recently passed an anti-conversion law called the **Uttar Pradesh Prevention of Unlawful Conversion of Religion Act, 2021.**
- The marriage cannot be registered without the district authority making an enquiry as to whether the **conversion is voluntary and not induced by coercion, allurement and threat.**
- The Act mandates that the **approval of the District Magistrate (DM) is necessary** to be obtained before conversion or marriage.
- The Act makes religious conversion for marriage a **non-bailable offence.**

Observation by the Court:

- The **marriage registrar lacks the power to withhold** the registration of marriage merely for the reason that the parties have not obtained the necessary approval of conversion from the district authority.
- The court directed the marriage registrar to forthwith register the marriage of such couples.
- The Court observed that **such an approval is directory and not mandatory.**
- The Act would not satisfy the test of **reasonableness and fairness, and would fail to pass the muster of Article 14** (Equality before law) **and Article 21** (Protection of Life and Personal Liberty).
- It observed that the **consent of the family or the community or the clan or the State or executive is not necessary**, once two adult individuals agree to enter into a wedlock which is lawful and legal.
- The court **directed the police** of the respective districts to **ensure the safety of these couples.**
- Further, the court **urged the central government to make a law implementing the UCC**, so that such atrocities are not repeated.
- This is because after implementation there will be less need for anti-conversion laws

Uniform Civil Code

- **Background:** Increase in legislation dealing with personal issues in the far end of British rule forced the government to form the **B N Rau Committee** to codify **Hindu law in 1941.**
- UCC is one that would provide for one law for the entire country, applicable to all religious communities in their personal matters such as marriage, divorce, inheritance, adoption etc.
- **Article 44 of the Constitution** lays down that the state shall endeavour to secure a UCC for the citizens throughout the territory of India.
- Article 44 is one of the **Directive Principles of State Policy (DPSP).**
- In order to bring uniformity, the courts have often said in their judgements that the government should move towards a UCC.

- The judgment in the *Shah Bano case (1985)* is well known.
- The Supreme Court in *ShayaraBano case (2017)* had declared the practise of Triple Talaq (talaq-e-biddat) as unconstitutional.

#MINERAL CONSERVATION & DEVELOPMENT RULES 2021

Recently, the **Ministry of Mines** has notified the **Mineral Conservation and Development (Amendment) Rules, 2021** to amend the Mineral Conservation and Development Rules (MCDR), 2017.



- The MCDR has been framed **under section 18 of the Mines and Minerals (Development and Regulation) Act, 1957** [MMDR Act].
- They provide rules regarding conservation of minerals, systematic and scientific mining, development of the mineral in the country and for the protection of the environment.

Compulsory Drone Survey:

- Rules prescribed that all plans and sections related to mine shall be prepared by combination of **Digital Global Positioning System (DGPS)** or **Total Station** or by **drone** survey in relation to certain or all leases as may be specified by **Indian Bureau of Mines (IBM, Nagpur)**.
- A **total station** is an optical instrument commonly used in construction, surveying and civil engineering. It is useful for measuring horizontal angles, vertical angles and distance.

Digital Image Submission:

- New Rule inserted to provide for **submission of digital images of mining areas by lessees and Letter of Intent holders**.
- Lessees having annual excavation plans of 1 million tonne or more or having leased area of 50 hectare or more **are required to submit drone survey images** of leased area and up to 100 meters outside the lease boundary every year.
- **Other lessees** submit high resolution satellite images.
- This step will not only **improve mine planning practices, security and safety** in the mines but also **ensure better supervision of mining operations**.
- **Reduction of Compliance Burden:** Provision of **daily return omitted to reduce compliance burden**. Power of taking action against incomplete or wrong or false information in monthly or annual returns given to IBM, in addition to State Government.

Penalty Provisions:

- Penalty provisions in the rules have been **rationalized**. Amendment in the rules **categorized the violations** of the rules under the following major heads:
- **Major Violations:** Penalty of imprisonment, fine or both.
- **Minor Violations:** Penalty reduced. Penalty of only fine for such violations prescribed.
- **Decriminalization of Rules:** Violation of other rules has been decriminalized. These rules did not cast any significant obligation on the concession holder or any other person.
- **Financial Assurance:** Provision of forfeiture of financial assurance or performance security of the lease holder added **in case of non-submission of final mine closure plan within the period specified**.
- **Increased Employment Opportunity:**
- Allowed engagement of a **part-time mining engineer or a part-time geologist** for small mines which will **ease compliance burden for small miners**.
- Diploma in mining and mine surveying granted by duly recognized institute along with a second class certificate of competency issued by the Director General of Mines Safety is added in qualification for full time Mining Engineer.
- Also, **qualification for part time Mining Engineer added**.

#RIGHT TO APPEAL AGAINST CONVICTION: KULBHUSHAN JADHAV

Recently, **Pakistan's Parliament** has enacted a law to give Indian death-row prisoner **Kulbhushan Jadhav** the right to file a review appeal against his conviction by a military court.



- The bill was enacted to implement an order of the **Int. Court of Justice (ICJ)**.
- However, India points out that the law has several "**shortcomings**", and that steps are needed to implement the ICJ's order "in letter and spirit".

Kulbhushan Jadhav Case:

- **Arrest:** A 51-year-old **retired Indian Navy officer**, Jadhav was **sentenced to death** by a Pakistani military court on **charges of espionage and terrorism** in April 2017.
- In December 2017, Jadhav's wife and mother were allowed to meet him across a glass partition, with India contesting Pakistan's claim that this was consular access at ICJ.
- **Denial of Consular Access:** India approached the ICJ against Pakistan for **denial of consular access (Vienna Convention)** to Jadhav and challenging the death sentence.
- **ICJ Ruling:** In 2019, the ICJ ruled that Pakistan was obliged under international laws to provide by means of its own choosing "**effective review and reconsideration**" of Jadhav's conviction.
- **Pakistan's Response:** In the wake of the ICJ order, the Pakistan government had promulgated a special ordinance to allow Jadhav to file a review.

- Pakistan's Parliament has passed the **International Court of Justice (Review and Reconsideration) Bill, 2021** aimed to fulfill the obligation under the verdict of the ICJ.

Shortcomings in the Law:

- **No Clear Road Map:** India believes the Bill reiterates a 2019 ordinance passed by Pakistan, without creating a machinery to facilitate an effective review and reconsideration in Kulbhushan Jadhav's case.
- **Extraordinary Power to Municipal Court:** It invites municipal courts in Pakistan to decide whether or not any prejudice has been caused to Jadhav on account of the failure to provide consular access.
- This is clearly a breach of the basic tenet, that municipal courts cannot be the arbiter of whether a State has fulfilled its obligations under international law.
- It further invites a municipal court to sit in appeal.

Implications of 'Effective Review and Reconsideration' for India:

- Effective review and reconsideration is a phrase which is different from 'review' as one understands in a domestic course.
- It **includes giving consular access** and helping Jadhav in preparing his defence.
- It means that **Pakistan has to disclose the charges and also the evidence** which it has been absolutely opaque about uptill now.
- Pakistan would also **have to disclose the circumstances in which Jadhav's confession** was extracted by the military.
- It implies that **Jadhav will have a right to defend** whichever forum or court hears his case.

International Court of Justice

- ICJ is a **principal judicial organization** of the United Nations (UN).
- It was established in 1945 by a **UN Charter** and began working in 1946 as the successor to the **Permanent Court of International Justice**.
- It settles legal disputes between member countries and gives advisory opinions to authorized UN Organs and Specialized Agencies.
- It is seated in the **Peace Palace of Hague, Netherlands**.

Vienna Convention

- The **Vienna Convention on Consular Relations** is an international treaty that defines consular relations between independent states.
- A consul (who is not a diplomat), is a representative of a foreign state in a host country, who works for the interests of his countrymen.
- **Article 36 of the Vienna Convention** states that foreign nationals who are arrested or detained in the host country must be given notice without delay of their right to have their embassy or consulate notified of that arrest.

#NATIONAL LEGAL SERVICES DAY: 9TH NOVEMBER

The National Legal Services Day is celebrated on **9th November** every year to spread awareness for ensuring reasonable fair and justice procedure for all citizens.



- NLSD was first started by the **Supreme Court of India** in 1995 to provide help and support to poor and weaker sections of the society.
- **Free legal services** are provided in matters before Civil, Criminal and Revenue Courts, Tribunals or any other authority exercising judicial or quasi judicial functions.
- It is observed **to make the citizens of the country aware of the various provisions under the Legal Services Authorities Act** and the rights of the litigants. On this day, each jurisdiction organizes legal aid camps, Lok adalats, and legal aid programmes.

Constitutional Provisions:

- **Article 39A** of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.
- **Articles 14 and 22(1)** also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all.

Objectives of Legal Services Authorities:

- Provide free legal aid and advice.
- Spread legal awareness.
- Organize **lokadalats**.
- Promote settlements of disputes through **Alternative Dispute Resolution (ADR)** Mechanisms. Various kinds of ADR mechanisms are Arbitration, Conciliation, Judicial settlement including settlement through Lok Adalat, or Mediation.
- Provide compensation to victims of crime.

Legal Services Institutions for providing Free Legal Services:

- **National Level: National Legal Services Authority (NALSA)**. It was constituted under the Legal Services Authorities Act, 1987. The Chief Justice of India is the Patron-in-Chief.
- **State Level: State Legal Services Authority**. It is headed by the Chief Justice of the State High Court who is its Patron-in-Chief.
- **District Level** District Legal Services Authority. The District Judge of the District is its ex-officio Chairman.

- **Taluka/Sub-Division Level** Taluka/Sub-Divisional Legal Services Committee. It is headed by a senior Civil Judge.
- **High Court:** High Court Legal Services Committee
- **Supreme Court:** Supreme Court Legal Services Committee.

Persons Eligible for Getting Free Legal Services:

- Women and children
- Members of SC/ST
- Industrial workmen
- Victims of mass disaster, violence, flood, drought, earthquake, industrial disaster.
- Disabled persons
- Persons in custody
- Those persons who have annual income of less than the amount prescribed by the respective State Government, if the case is before any court other than the Supreme Court, and less than Rs. 5 Lakhs, if the case is before the Supreme Court.
- Victims of Trafficking in Human beings or begar.

CONSTITUTION DAY OR SAMVIDHAN DIWAS

- India celebrates **November 26** every year as '**Constitution Day**' or '**Samvidhan Divas**' to commemorate the **adoption of the Constitution of India**. On November 26, 1949, India had adopted the Constitution which later came into effect on January 26, 1950.
- Today, the country marks the 72nd anniversary of the historic event that also marked the dawn of a new era back in 1949.
- **Constitution Day of India**, also known as '**Samvidhan Divas**' or '**National Constitution day**' or '**National Law Day**' aims at raising awareness about the Indian Constitution.
- In 2015, the BJP-led government had announced that November 26 will be observed as the 'Constitution Day' to promote the Constitutional values among the Indian Citizens.



When is Constitution Day celebrated in India?

- **India celebrates Constitution Day on November 26 every year.** The Union Ministry of Social Justice had notified back in 2015 that the Central Government has decided to celebrate November 26 as Constitution Day.
- **Why 26 November is celebrated as Constitution Day?**
- 26 November is celebrated as the Constitution Day as on this particular date in **1949 India had adopted the Constitution of India**.
- **Dr. Bhimrao Ambedkar, who also became the first Law Minister of India**, was appointed as the

Chairman of the Constitution drafting committee in 1947.

- He was given the responsibility of writing the new Constitution after **India gained Independence from the British on August 15, 1947.**

History behind the birth of Constitution of India

- India celebrates its Independence on August 15, 1947, and celebrates Republic Day on January 26, 1950, to mark the enforcement of the Constitution of India.
- In 1934, the **demand of the Constituent Assembly was made by M.N. Roy, a Communist Party leader.** It was later taken up by the Congress Party and the demand was accepted by the Britishers in 1940.
- Before India gained Independence, the Constituent Assembly of India had met for the first time on December 9, 1946. **Dr. Sachchidananda Sinha** became the first President of the Constituent Assembly and the meeting continued till January 24, 1950.
- Total **11 sessions were convened under the Constituent Assembly** and they met for around 166 days. On August 29, 1947, after India became Independent, a drafting committee was constituted for preparing a draft Constitution under the Chairmanship of Dr. B.R. Ambedkar.
- The Drafting Committee of the Indian Constitution finished their work on November 26, 1949, and on January 26, 1950, the Constitution of India came into force.

Importance of Indian Constitution

- The Indian Constitution is the supreme law of India. The document lays down the framework that outlines the fundamental political structure, code, powers, procedures, and duties of the Indian Government institutions.
- The Indian Constitution is significant as it also outlines the **fundamental rights, duties of citizens of India, and directive principles.**
- The **Constitution of India imparts constitutional supremacy and the Parliament** cannot override the Constitution. It declares the country as sovereign, socialist and secular, and democratic republic and assures the citizens of the country justice, equality, and liberty.

#RERA IS RETROACTIVE: SUPREME COURT

Recently, the **Supreme Court (SC)** interpreted that the **Real Estate (Regulation and Development) Act, 2016 (RERA)** is retroactive.

- The SC's ruling is aimed at protecting **homebuyers**, the ruling brings a **major relief for the buyers**, **speeds up the resolution process**, and makes it difficult for state governments to dilute the intent of the law.



Retroactive Implementation:

- The SC affirmed that the provisions of the RERA 2016 are **applicable to projects that were ongoing** and for whom completion certificates were not obtained at the time of the enactment of the law.
- Under the Act, **registration of real estate projects was mandatory**.
- It mandated that for projects that were ongoing on the date of commencement of the Act, specifically projects for which the completion certificate had not been issued, the **promoters shall be under obligation to make an application to the authority** for registration of the project.
- Regulations of RERA authorities in states including **Uttar Pradesh, Haryana, Punjab, Karnataka, Telangana and Tamil Nadu** are **currently not in line** with this position and may need to amend their rules to ensure all ongoing projects get covered under RERA.

Recovery of Invested Amount:

- SC also held that the **amount invested by the allottees, along with interest** as quantified by the regulatory authority or the adjudicating officer, **can be recovered as arrears of land revenue from the builders**.

- The builders had contended that homebuyers are only entitled to recover interest or penalty as arrears of land.
- However, taking into consideration the scheme of the Act, the court observed, what is to be returned to the allottee is his own life savings. **The amount with interest as computed/quantified by the authority becomes recoverable** and such arrear becomes enforceable in law.

Penalty for Developers:

- It is mandatory for real estate developers to **deposit at least 30% of the penalty ordered by the regulator**, or the full amount as the case may be, before they challenge any RERA order. This is expected to **ensure that only genuine appeals are filed and homebuyers' interests are protected**.
- SC noted that the obligation cast upon the promoter of pre-deposit under the Act, in no circumstance can be said to be in **violation of Article 14** (Equality before law) **or Article 19 1(g)** (freedom to practise any profession, or to carry on any occupation, trade or business) **of the Constitution of India**.
- Builders/promoters who are in appeal are **required to make the predeposit to get the appeal entertained** by the Appellate Tribunal.
- A **promoter** is defined as a person who is entrusted with the task of promoting the project (real estate project), which was developed or constructed by the developer.
- The intention of the legislature appears to be to **ensure that the rights of the decree holder (the successful party) are to be protected** and only genuine bonafide appeals are to be entertained.
- Need of Real Estate Regulation and Development Act, 2016
- **Securing the Largest Investment Sector:** Regulation of the real estate sector was under discussion since 2013, and the RERA Act eventually came into being in 2016. Data show that **more than 77% of the total assets of an average Indian household are held in real estate**, and it's the single largest investment of an individual in his lifetime.
- **Creating Accountability:** Prior to the law, the real estate and housing sector was largely unregulated, with the consequence that consumers were unable to hold builders and developers accountable.
- The **Consumer Protection Act, 1986 was inadequate** to address the needs of homebuyers.
- RERA was introduced with the objective of **ensuring greater accountability towards consumers, to reduce frauds and delays**, and to set up a fast track dispute resolution mechanism.

Major Provisions:

- Establishment of state level regulatory authorities- **Real Estate Regulatory Authority (RERA):** The Act provides for State governments to establish more than one regulatory authority with the following mandate:
 - Register and maintain a database of real estate projects; publish it on its website for public viewing,
 - Protection of interest of promoters, buyers and real estate agents
 - Development of sustainable and affordable housing,
 - Render advice to the government and ensure compliance with its Regulations and the Act.

- **Establishment of Real Estate Appellate Tribunal-** Decisions of RERAs can be appealed in these tribunals.
- **Mandatory Registration:** All projects with plot size of minimum 500 sq.mt or eight apartments need to be registered with Regulatory Authorities.
- **Deposits:** Depositing 70% of the funds collected from buyers in a separate escrow bank account for construction of that project only.
- **Liability:** Developer's liability to repair structural defects for five years.
- **Penal interest in case of default:** Both promoter and buyer are liable to pay an equal rate of interest in case of any default from either side.
- **Cap on Advance Payments:** A promoter cannot accept more than 10% of the cost of the plot, apartment or building as an advance payment or an application fee from a person without first entering into an agreement for sale.
- **Carpet Area:** Defines Carpet Area as net usable floor area of flat. Buyers will be charged for the carpet area and not the super built-up area.
- **Punishment:** Imprisonment of up to three years for developers and up to one year in case of agents and buyers for violation of orders of Appellate Tribunals and Regulatory Authorities.

Implementation of the Act:

- **34 states/Union Territories have notified rules under RERA**, while its implementation in Nagaland is under process.
- **West Bengal has enacted its own legislation** — West Bengal Housing Industry Regulation Act, 2017 (HIRA) — instead of notifying rules under RERA.
- 30 States/UTs have set up Real Estate Regulatory Authorities, and **26 have set up Real Estate Appellate Tribunals**, as per the latest data available with the Ministry of Housing and Urban Affairs.

#SUPREME COURT ON SC/ST ACT

Recently, in a judgement, the **Supreme Court** has observed that the **apex court and high courts** have the power to quash criminal cases filed under various 'special statutes' including the SC/ST Act.

- The **Supreme Court** has inherent powers under **Article 142 of the Constitution** or that of the **High Court under Section 482 of the Code of Criminal Procedure** to quash proceedings under the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 (SC/ST Act)**.

**Situations on Quashing Cases under 'Special Statutes':**

- When the court is **satisfied that the offence in question**, although covered under the SC/ST Act, is **primarily private or civil in nature** or when this offence has not been committed on account of the victim's caste or where the continuation of legal proceedings would constitute an abuse of process of law.
- When **considering a prayer for quashing** on the basis of a compromise/settlement between the two parties, the court is satisfied that **the underlying objective of the SC/ST Act would not be contravened** if the crime goes unpunished.

Article 142:

- **About:** It provides **discretionary power to the Supreme Court** as it states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is **necessary for doing complete justice** in any cause or matter pending before it.
- **Constructive Application:** In the early years of the evolution of Article 142, the general public and the lawyers both lauded the Supreme Court for its efforts to bring complete justice to various deprived sections of society or to protect the environment.
- In the ***Union Carbide case***, relating to the victims of the Bhopal gas tragedy, the Supreme Court placed itself above the laws made by the Parliament or the legislatures of the States by saying that, to do complete justice, it could even override the laws made by Parliament.
- However, in the ***Supreme Court Bar Association v. Union of India***, the Supreme Court stated that **Article 142 could not be used to supplant the existing law, but only to supplement the law**.
- **Cases of Judicial Overreach:** In recent years, there have been several judgments of the Supreme Court wherein it has been **foraying into areas which had long been forbidden to the judiciary by reason of the doctrine of 'separation of powers'**, which is part of the basic structure of the Constitution. One such example is:

- The **ban on the sale of alcohol along national and state highways**: While the notification by the central government prohibited liquor stores along National Highways only, the Supreme Court put in place a **ban on a distance of 500 metres by invoking Article 142**.
- **Section 482 of the Code of Criminal Procedure**:
- The section **allows the High Court to pass any order so as to ensure justice**. It also gives the court power to quash the proceedings of lower court or to quash FIRs.

SC/ST Act:

- SC ST Act 1989 is an Act of Parliament enacted to **prohibit discrimination against SC & ST community's members** and prevent atrocities against them.
- The Act is also a **recognition of the depressing reality** that despite undertaking several measures, the **Scheduled Castes/ Scheduled Tribes** continue to be subjected to various atrocities at the hands of upper-castes.
- The Act has been enacted keeping in view the express constitutional safeguards enumerated in **Articles 15 (Prohibition of Discrimination), 17 (Abolition of Untouchability) and 21 (Protection of Life and Personal Liberty) of the Constitution**, with a twin-fold objective of **protecting the members of these vulnerable communities** as well as to **provide relief and rehabilitation** to the victims of caste-based atrocities.
- In the **amended SC/ST Act (2018)**, preliminary inquiry is not a must and no prior approval is also required for appointing authorities for senior police officers to file FIRs in cases of atrocities on SC and ST.

#VANNIAKULA RESERVATION UNCONSTITUTIONAL: MADRAS HC

Recently, the Madras High Court has declared as **unconstitutional** a **reservation law** passed by the Tamil Nadu legislative Assembly.

- The law envisaged providing **10.5% internal reservation to Vanniakula Kshatriya community**, within the 20% earmarked for **Most Backward Classes (MBCs)** in education and public employment.

About VanniakulaKshatriya Reservation:

- The reservation was provided under the State within the reservation for the **Most Backward Classes and Denotified Communities Act, 2021**.
- VanniakulaKshatriya (including **Vanniar, Vanniya, VanniaGounder, Gounder or Kander, Padayachi, Palli and Agnikula Kshatriya**) community.
- The **second Tamil Nadu Backward Commission in 1983**, held that the population of Vanniakula Kshatriyas was found to be 13.01% of the State's total population.
- Therefore, provision of **10.5% reservation** to a community with a population of 13.01% could not be called disproportionate.



Grounds for Challenging the Bill:

- The law was challenged on account of the law being **passed just hours** before the **Model Code of Conduct** (MCC) came into force in the State in February 2021.
- Further, the petitioner argued that the **enactment was politically motivated** and that the law was **passed hastily**.
- **Tamil Nadu Government's Argument:**
- In a democratic polity, an **elected government cannot be barred** from exercise of its power to make a policy to legislate any law during its **tenure/until the last minute** it holds power to meet the **public opinion at large**.
- In 2020, a commission to collect quantifiable data on castes, communities and tribes in the State was established in chairmanship of **retired High Court judge A. Kulasekaran** within six months.
- The Tamil Nadu government held that the **commission did not submit any report within its tenure**.
- Further, asserting that the **government was empowered to pass such a law for providing internal reservation**, it referred to a **2007 enactment through which Backward Class Muslims** in the State were being actively provided separate reservation.

Model Code of Conduct

- The MCC is a **set of guidelines** issued by the **Election Commission of India** to regulate political parties and candidates prior to elections.
- It **helps EC in keeping with the mandate it has been given** under **Article 324** of the Constitution, which gives it the power to supervise and conduct free and fair elections to the Parliament and State Legislatures.
- The MCC is operational from the date on which the **election schedule** is announced until the date of result announcement.

Evolution:

- The origins of the **MCC lie in the Assembly elections of Kerala in 1960**, when the State administration prepared a 'Code of Conduct' for political actors.
- Subsequently, in the **Lok Sabha elections** in 1962, the ECI circulated the code to all recognised political parties and State governments and it was wholeheartedly followed.
- It was in 1991 after repeated flouting of the election norms and continued corruption, the **EC decided to enforce the MCC more strictly**.

Constitutional Provisions for Elections

- **Part XV** of the Indian constitution deals with elections, and establishes a commission for these matters.
- The Election Commission was established in accordance with the **Constitution on 25th January 1950**.
- **Article 324 to 329** of the constitution deals with powers, function, tenure, eligibility, etc of the commission and the members.

#PANDORA PAPERS EXPOSED TOP WORLD LEADERS

- **The Pandora Papers** are the 11.9 million leaked files from 14 global corporate services firms that have set up approximately 29,000 secret offshore companies and private trusts to hide their wealth.
- These leaked Pandora Papers reveal hidden wealth tax, money laundering, and tax avoidance by some of the world's rich and powerful. **The Pandora Papers include about 380 persons of Indian nationality.**
- The Pandora Papers is an ongoing investigation. However, if the concept of trusts is legal in India, then what is the investigation about Pandora Papers.



What is the Pandora Papers exposé?

- The Pandora Papers includes files from global corporate services firms who have set up secret offshore companies and private trusts in jurisdictions that are loosely regulated by tax laws but have highly tight secrecy laws and countries including the **US, New Zealand, Singapore, Belize, Samoa, the British Virgin Islands, Panama.**
- The Pandora Papers include assets in secret offshore companies such as real estate properties, shareholding, and cash.

What do Pandora Papers show?

- The Pandora Papers reveal how the rich and powerful individuals and entities on the radar of the Pandora investigation have set multi-layered trusts for the purposes of real estate. **The purposes of the layered structured trusts are divided into two objectives:**
- Hide from tax authorities by hiding the **real identities behind the offshore companies,**
- Safeguard investments such as **real estate, aircraft, cash, art, shareholdings, yachts, etc from law enforcers and creditors.**

What is a Trust in case of Pandora Papers?

- A trust can be described as a **fiduciary arrangement where a third party, referred to as the trustee, holds assets** on behalf of individuals or organizations that are to benefit from it.
- A trust is **not a separate legal entity, but its legal nature comes from the 'trustee'.** At times, the 'settlor' appoints a 'protector', who has the powers to supervise the trustee, and even remove the trustee and appoint a new one.
- **Indian Law:** The **Indian Trusts Act, 1882,** gives legal basis to the concept of trusts. Indian laws **recognise the trust as an obligation of the trustee** to manage and use the assets settled in the trust for the benefit of 'beneficiaries'. India also recognises offshore trusts.
- **Off-the-Shelf Company:** An 'off-the-shelf' company or **ready-made company is a pre-registered limited company,** however, it has never been traded. An 'off-the-shelf' company **is ready for immediate use** and can be purchased after paying a certain cost for it.

Difference between Pandora Papers, Paradise Papers, and Panama Papers?

- The Paradise Papers and Panama Papers showed corporates and individuals respectively setting up offshore entities. The Pandora Papers reveal how corporates, business families, and the rich have been using Trusts as tax havens in offshore companies to hold their assets and investments.

#ARMED FORCES (SPECIAL POWERS) ACT, AFSPA

- The Central government extended the **Armed Forces (Special Powers) Act** in three districts of Arunachal Pradesh by another six months.
- The **government declared the three districts** of Changlang, Longding, and Tirap in Arunachal Pradesh along with the areas that fall under the jurisdiction of Mahadevpur and Namsai police stations bordering Assam as 'disturbed areas' under **Section 3 of the AFSPA Act in the wake of recent insurgent activities.**

**What is AFSPA?**

- AFSPA is the Armed Forces (Special Powers) Act, 1958, which gives armed forces the authority to control and maintain public order in areas or districts **declared as 'disturbed areas'.**
- The armed forces in those areas do not allow a gathering of five or more people in an area or ban the possession of firearms.
- They are vested with the power to use force or open fire after giving a warning if they find or believe a person is in violation of the law. On the basis of reasonable suspicions, the armed forces can arrest a person or search premises without a warrant.

How did AFSPA begin?

- The Armed Forces (Special Powers) Act, 1958, came into force due to increasing violence in the Northeastern States almost decades ago when the State governments were unable to control the growing insurgency situation across their states.

- The **Armed Forces (Special Powers) Bill** was passed in both the Houses of Parliament. The President of India gave the assent on September 11, 1958. Since then, the **Armed Forces (Special Powers) Act, 1958**, came into effect.

What is a disturbed area under AFSPA? Who declares a disturbed area?

- An area is declared disturbed by a notification under **Section 3 of the Armed Forces (Special Powers) Act, 1958**, where the use of armed forces to aid civil authorities is necessary.
- The power to declare an **area (whole or part of the State or Union Territory)** as 'disturbed area' under AFSPA is with the Central government, the Governor of the State, or the Administrator of the Union Territory.
- Usually, the Ministry of Home Affairs enforces the AFSPA where necessary.

#JUSTICE RAVEENDRAN COMMITTEE IN PEGASUS CASE

Recently, the **Supreme Court (SC)** has appointed an expert committee [to be overseen by a retired apex court judge (**Justice Raveendran Committee**)] in the **Pegasus case**.

- Under the case, the Union Government is alleged to have used **spyware for surveillance on private citizens**.

Supreme Court Judgment

- **Judicial Principle Against Bias:** The court rejected the government's plea to set up its own probe.
- The court asserted that the government appointment of probe would **violate the settled judicial principle against bias**, i.e., that '**justice must not only be done, but also be seen to be done**,'



- **Formation of Expert Committee:** On account of the government's inaction to file a detailed response to the allegations made by the petitioners, the Court has constituted a panel of experts under former SC judge **Justice R V Raveendran**.

Issues Addressed by the SC:

- **Right to Privacy:** The court reiterated that **right to privacy** is as **sacrosanct** as **human existence** and is **inalienable to human dignity and autonomy**.
- The **Right to Privacy** was held as a part of **fundamental rights** by the Supreme Court in **K S Puttaswamy case, 2017**.
- Any surveillance or snooping done on an individual by the state or any outside agency is an **infringement of that person's right to privacy**.

Surveillance on Free Speech:

- The Court has drawn a **link between surveillance and self-censorship**.
- The knowledge that one is under the threat of being spied on leads to **self-censorship** and **potential chilling effect**.
- The **chilling effect surveillance** can produce is an assault on the vital **public-watchdog role of the press**, which may undermine the ability of the press to provide accurate and reliable information (Free Speech).
- It further held that, an important and necessary corollary of such a right is to ensure the **protection of sources of information**.

About Pegasus:

- It is a type of malicious software or **malware classified as a spyware**.
- It is **designed to gain access to devices, without the knowledge of users**, and gather personal information and relay it back to whoever it is that is using the software to spy.
- Pegasus has been **developed by the Israeli firm NSO Group** that was set up in 2010.
- The earliest version of Pegasus discovered which was captured by researchers in 2016, **infected phones through what is called spear-phishing** – text messages or emails that trick a target into clicking on a malicious link.
- Since then, however, NSO's attack capabilities have become more advanced. Pegasus infections can be achieved through so-called **"zero-click" attacks**, which do not require any interaction from the phone's owner in order to succeed.
- These will often exploit "zero-day" vulnerabilities, which are flaws or bugs in an operating system that the mobile phone's manufacturer does not yet know about and so has not been able to fix.

#UNHRC RECOGNIZES 'RIGHT TO CLEAN ENVIRONMENT'

Recently, the **United Nations Human Rights Council** unanimously voted for recognizing a **clean, healthy and sustainable environment** as a **Universal Human Right**.



- If recognised by all, the right will be the first of its kind in more than 70 years since the **Universal Declaration of Human Rights (UDHR)** was adopted by the UN General Assembly in 1948.
- **UDHR:** The 30 rights and freedoms include **civil and political rights**, like the right to life, liberty, free speech and privacy and economic, social and cultural rights, like the right to social security, health and education, etc.

Background:

- The **concept of human rights in general emerged after the Second World War (1939-45)**, but the right to a healthy environment, as one of those human rights, was never a priority.
- The **right to a clean environment is rooted in the 1972 Stockholm Declaration**, popularly called as the **Magna Carta of human environment**.
- It contained principles and recommendations for environmental policy.
- **'Caring for the Earth 1991'** and the **'Earth Summit' of 1992** also declared that human beings are entitled to a healthy and productive life in harmony with nature.

About:

- The human right to a healthy environment **brings together the environmental dimensions of civil, cultural, economic, political, and social rights, and protects the core elements of the natural environment** that enable a life of dignity.
- The **right to life (Article 21)** has been used in a diversified manner **in India**. It includes, inter alia, the **right to survive as a species, quality of life, the right to live with dignity and the right to livelihood**.
- **Article 21 of the Indian Constitution states:** 'No person shall be deprived of his life or personal liberty except according to procedures established by law.'
- Further the **Constitutional (forty-second Amendment) Act, 1976** incorporated two significant articles viz. **Article 48-A and 51A (g)** thereby making the Indian Constitution the first in the world conferring constitutional status to the environment protection.
- **Article 48-A:** The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.
- **Article 51A (g):** It is a duty of every citizen to protect and preserve the environment.

Environment Protection Laws in India:

- **Wildlife (rotection) Act, 1972.**
- **Water (prevention and control of pollution) Act, 1974.**
- **The Forest (conservation) Act, 1989.**
- **The Air (prevention and control of pollution) Act, 1981**
- **The Environment (protection) Act, 1986.**
- **The National Green Tribunal Act, 2010**

United Nations Human Rights Council

- It is an **inter-governmental body within the United Nations system** responsible for strengthening the promotion and protection of **human rights** around the world.
- **Formation:** The Council was created by the **United Nations General Assembly (UNGA) in 2006**. It is headquartered in **Geneva, Switzerland**.
- **Members:** It is made up of 47 United Nations Member States which are **elected by the UNGA**.
- **India was elected in January 2019** for a period of three years.
- **Procedures and Mechanisms: Universal Periodic Review:** UPR serves to assess the human rights situations in all United Nations Member States.
- **UN Special Procedures:** These are made up of **special rapporteurs**, special representatives, independent experts and working groups that monitor, examine, advise and publicly report on thematic issues or human rights situations in specific countries.

#CHINA PASSED NEW LAND BORDER LAW

- Amid the military standoff with India in eastern Ladakh, China's national legislature on October 23, 2021, adopted a new **Land Border Law** for the protection and exploitation of the land border areas.
- The law states that the sovereignty and territorial integrity of the People's Republic of China are sacred and inviolable. The **Land Border Law will come into effect from January 1, 2022**. The Law reflects the growing confidence of China in its capability to manage its 22,000-km land border with 14 countries.
- The Land Border Law was approved October 23, 2021, by the members of the National People's Congress (NPC) Standing Committee at the closing meeting of the 31st session of the 13th NPC Standing Committee.
- The meeting was presided over by the NPC Standing Committee's Chairman Li Zhanshu. President Xi Jinping signed orders to promulgate the law.
- **Significance** The Land Border Law reflects the growing confidence of China in its capability to manage its 22,000-km land border with 14 countries including Russia, North Korea, Mongolia, India, and Bhutan.
- China has land border disputes with **India (3,488-km along LAC) and Bhutan (400-km)** while it has resolved boundary disputes with 12 countries.



About the Law:

- **Sovereignty and Territorial Integrity:** It stipulates that the sovereignty and territorial integrity of the People's Republic of China are sacred and inviolable.
- The state shall take measures to safeguard territorial integrity and land boundaries and guard against and combat any act that undermines territorial sovereignty and land boundaries.
- **Responsibilities:** It designates the various responsibilities of the military, the State Council or Cabinet, and provincial governments in managing the security and economic issues in border areas.
- The **People's Liberation Army (PLA)** "shall carry out border duties" including "**organising drills**" and "**resolutely prevent, stop and combat invasion, encroachment, provocation and other acts**".
- The **state shall take measures to strengthen border defence, support economic & social development** as well as opening-up in border areas, improve public services and infrastructure in such areas, encourage and support people's life and work there.
- The state shall, following the principle of equality, mutual trust and friendly consultation, **handle land border-related affairs with neighbouring countries through negotiations** to properly resolve disputes and longstanding border issues.

India-China border dispute

- India-China border disputes run **3,488-km along the Line of Actual Control (LAC)**. On June 15, 2020, the India-China border witnessed the worst violence since 1967 that killed 20 Indian soldiers.
- The clash occurred in the **Galwan Valley** which is strategically located between Ladakh on the Indian side of LAC and Aksai Chin on China's side of the LAC.
- Following the clash in Galwan Valley, China claimed that the **entire valley** belongs to China while India termed the claim as exaggerated.
- As per experts and scholars, the LAC claims and territorial claims are different. The LAC claims refer to the territory which is under the effective control of each country. India refers to China's claim to the entire Galwan Valley as unilaterally altering the LAC.

#SWITZERLAND LEGALIZED SAME-SEX MARRIAGE

- Switzerland has agreed to legalized civil marriage and the right to adopt children for same-sex couples by a nearly two-thirds majority in a referendum on September 26, 2021.
- With this, Switzerland has **become one of the last countries in Western Europe** to legalize gay marriage.
- As per the results provided by the **Swiss Federal Chancellery**, 64.1% of voters have voted in favour of same-sex marriage. The voting was done in a nationwide referendum that was conducted under Switzerland's system of direct democracy.



What will be different under amended law?

- The **latest amended law in Switzerland** will make it possible for same-sex couples to get married, and to adopt children that are unrelated to them.
- Married lesbian couples in the country will also be allowed to have children through **sperm donation which is currently legal only for married heterosexual couples**.
- The amended law will also make it easier for the foreign spouses of a Swiss individual to get citizenship.

Background

- Federal government has approved the **marriage laws in year 2020 and in the line; parliament had also approved them, granting all couples the same rights**.
- However, opponents were seeking to limit marriages to unions between a man and a woman. Thus, they collected signatures to force a referendum.

Same sex couple in Switzerland

- Same-sex couples in Switzerland have been able to enter into a civil partnership since 2007. It grants them some legal rights. However, it is not equal to a marriage.
- Country not allowing same sex marriage: Italy is the only country in **Western Europe which does not allow marriage between same-sex couples. It only allows civil unions**.

Legality of same-sex marriages in India:

- The **right to marry is not expressly recognized either as a fundamental or constitutional right under the Indian Constitution**.
- Though marriage is regulated through **various statutory enactments**, its recognition as a fundamental right has only **developed through judicial decisions of India's Supreme Court**.
- Such declaration of law is binding on all courts throughout India under **Article 141** of the Constitution.
- **Important Supreme Court Decisions:**
- **Marriage as a Fundamental Right (*Shafin Jahan v. Asokan K.M. and others 2018*):**

- While referring to **Article 16** of **Universal Declaration of Human Rights** and the Puttaswamy case, the SC held that the **right to marry a person of one's choice is integral to Article 21** of the Constitution.
- **Article 16** (2) in the Indian constitution provides that there cannot be any discrimination on grounds only of religion, race, caste, sex, descent, and place of birth, residence or any of them.
- The **right to marry** is intrinsic to the liberty which the Constitution guarantees as a fundamental right, is the **ability of each individual to take decisions** on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty.

#1ST FEMALE ACTING PRESIDENT OF USA: KAMALA HARRIS

- **US Vice-President Kamala Harris** became the **first female acting President of the United States** for one hour and 25 minutes when US President Joe Biden temporarily transferred power to Harris while he went under anesthesia for a routine colonoscopy.
- With this development, 57-years-old Kamala Harris is now the **first woman ever who held presidential powers in the 250-years-old history of the US**.
- Kamala Harris is the first woman, **first African-American and first Asian-American, first Indian-American** who holds the second-most powerful position in the US.
- **Harris was elected US Vice-President on November 7, 2020**, after Joe Biden was declared the President of the United States in the US Presidential Elections 2020.



How did Kamala Harris become the first woman with presidential powers?

- US President Joe Biden underwent his first routine **annual physical checkup at Walter Reed Medical Center since taking the office**.
- Following this, it is a protocol for a **Vice-President to assume Presidential powers** while the President undergoes a medical procedure that requires sedation or anesthesia.

What is the procedure to transfer Presidential Powers to Vice-President in the US?

- **Section 3 of the 25th Amendment to the US Constitution** says the President can send a letter to the Speaker of the House of Representatives and the president pro tempore of the Senate declaring they are "unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be **discharged by the Vice President as Acting President**."
- **As per Section 3 of the 25th Amendment to the US Constitution**, US President Joe Biden wrote a letter to the House Speaker Nancy Pelosi and Democratic Senator Patrick Leahy of Vermont (who is the president pro tempore of the Senate) for the official transfer of the Presidential Powers to **US Vice-**

President Kamala Harris before he underwent the routine checkup.

- The **25th Amendment of the US Constitution** comprises the procedure through which a President or Vice-President of the US can be replaced in the event of death, resignation, removal or incapacitation. The 25th Amendment was enacted **following the death of former US President John F Kennedy who was assassinated.**

Past instances of transfer of Presidential Powers in the US

- In the past, US presidents have transferred **Presidential Powers** while they underwent routine medical checkups which include a colonoscopy that may require sedation or anesthesia.
- Former US President George W Bush had undergone the routine colonoscopy twice (2002 and 2007) during which he transferred his **Presidential Powers to then Vice-President Dick Cheney** for a couple of hours.
- **Former US President Donald Trump** has been an exception who did not undergo sedation or anesthesia during his routine colonoscopy in 2019 and hence did not transfer his **Presidential Powers to then Vice-President Mike Pence.**

Five Firsts after US elections

- Joe Biden has become the **oldest President of the United States.**
- Kamala Harris has become the **first female Vice President of the States.**
- **Vice President Harris** has also become the **first Asian, African-American to hold the first.**
- **Douglas Emhoff**, the husband of the Vice President has become first Second Gentleman of the United States.
- **Douglas Emhoff** has also become the first Jewish spouse to the US vice president.

#TENURE OF CBI & ED DIRECTORS EXTENDED

- The central government moved an ordinance on November 14, 2021 proposing an **extension of the tenure of the CBI and ED Directors up to 5 years.** The ordinance was promulgated after it received President Ram Nath Kovind's assent.
- The centre's ordinance had sought three consecutive **one-year term extensions for the directors of CBI and Enforcement Directorate.**
- The current term of CBI and ED Chiefs is two years, as per the **Central Vigilance Commission (CVC) Act, 2003.** The centre is expected to table a law in Parliament to replace the same.
 - **Current CBI Chief:** Subodh Kumar Jaiswal (incumbent since May 25, 2021)
 - **Current ED Director:** Sanjay Kumar Mishra (incumbent since November 19, 2018)



- The **Delhi Special Police Establishment (DSPE) Act, 1946** and the **Central Vigilance Commission (CVC) Act, 2003** have been amended to give the government the power to keep the two chiefs in their posts for one year after they have completed their two-year terms.
- The chiefs of the Central agencies currently have a fixed two-year tenure, **but can now be given three annual extensions.**

Amendments in DSPE Act:

- Provided that the period for which the Director holds the office on his initial appointment **may, in public interest, on the recommendation of the Committee** (the committee led by the Prime Minister and leader of Opposition and CJI as members) and for the reasons to be recorded in writing, be **extended up to one year at a time.**
- Provided further that **no such extension shall be granted after the completion of a period of five years** in total including the period mentioned in the initial appointment.

Amendments in CVC Act:

- Provided that the period for which the Director of Enforcement holds the office on his initial appointment may, in public interest, on the **recommendation of the Committee** (comprising of CVC chief, Revenue and Home Secretaries among others) and for the reasons to be recorded in writing, be **extended up to one year at a time.**
- Provided further that **no such extension shall be granted after the completion of a period of five years** in total including the period mentioned in the initial appointment.

Central Bureau of Investigation

- The **CBI was set up in 1963** by a resolution of the Ministry of Home Affairs.
- Now, the CBI comes under the administrative control of the **Department of Personnel and Training (DoPT)** of the Ministry of Personnel, Public Grievances and Pensions.
- The establishment of the CBI was **recommended by the Santhanam Committee on Prevention of Corruption (1962-1964).**
- The CBI is not a statutory body. It derives its powers from the DSPE Act, 1946.
- The CBI is the main investigating agency of the Central Government. It also provides assistance to the **Central Vigilance Commission** and **Lokpal.**
- It is also the nodal police agency in India which coordinates investigations on behalf of **Interpol Member countries.**
- The CBI is headed by a **Director.**
- The CBI has jurisdiction to investigate offences pertaining to **69 Central laws, 18 State Acts and 231 offences in the IPC.**

Enforcement Directorate

- Directorate of Enforcement is a **specialized financial investigation agency** under the Department of Revenue, Ministry of Finance.
- On 1st May 1956, an 'Enforcement Unit' was formed, in the **Department of Economic Affairs, for handling Exchange Control Laws violations** under Foreign Exchange Regulation Act, 1947.
- In the year 1957, this Unit was renamed as 'Enforcement Directorate'.
- ED enforces the following laws:
- **Foreign Exchange Management Act, 1999 (FEMA)**
- **Prevention of Money Laundering Act, 2002 (PMLA)**

#MP LOCAL AREA DEVELOPMENT SCHEME (MPLAD SCHEME)

The Union Cabinet has approved the **restoration of the Member of Parliament Local Area Development Scheme (MPLADS)** for the **remaining part of Financial Year 2021-22 till 2025-26**.

- It will be **co-terminus with the period of the 15th Finance Commission**.
- The scheme was **suspended for two financial years (2020-21 and 2021-22)**.
- **About:** It is a **Central Sector Scheme** which was announced in December 1993.



Objective:

- To **enable MPs to recommend works of developmental nature** with emphasis on the creation of durable community assets in the areas of drinking water, primary education, public health, sanitation and roads, etc. **primarily in their Constituencies**.
- Since June 2016, the MPLAD funds can also be used for implementation of the schemes such as **Swachh Bharat Abhiyan, Accessible India Campaign (Sugamya Bharat Abhiyan)**, conservation of water through rain water harvesting and **SansadAadarsh Gram Yojana**, etc.

Implementation:

- The process under MPLADS **starts with the Members of Parliament recommending works to the Nodal District Authority**.
- The **Nodal District concerned is responsible for implementing the eligible works** recommended by the Members of Parliament and maintaining the details of individual works executed and amount spent under the Scheme.
- **Functioning:** Each year, **MPs receive Rs. 5 crore in two instalments** of Rs. 2.5 crore each. Funds under MPLADS are **non-lapsable**.

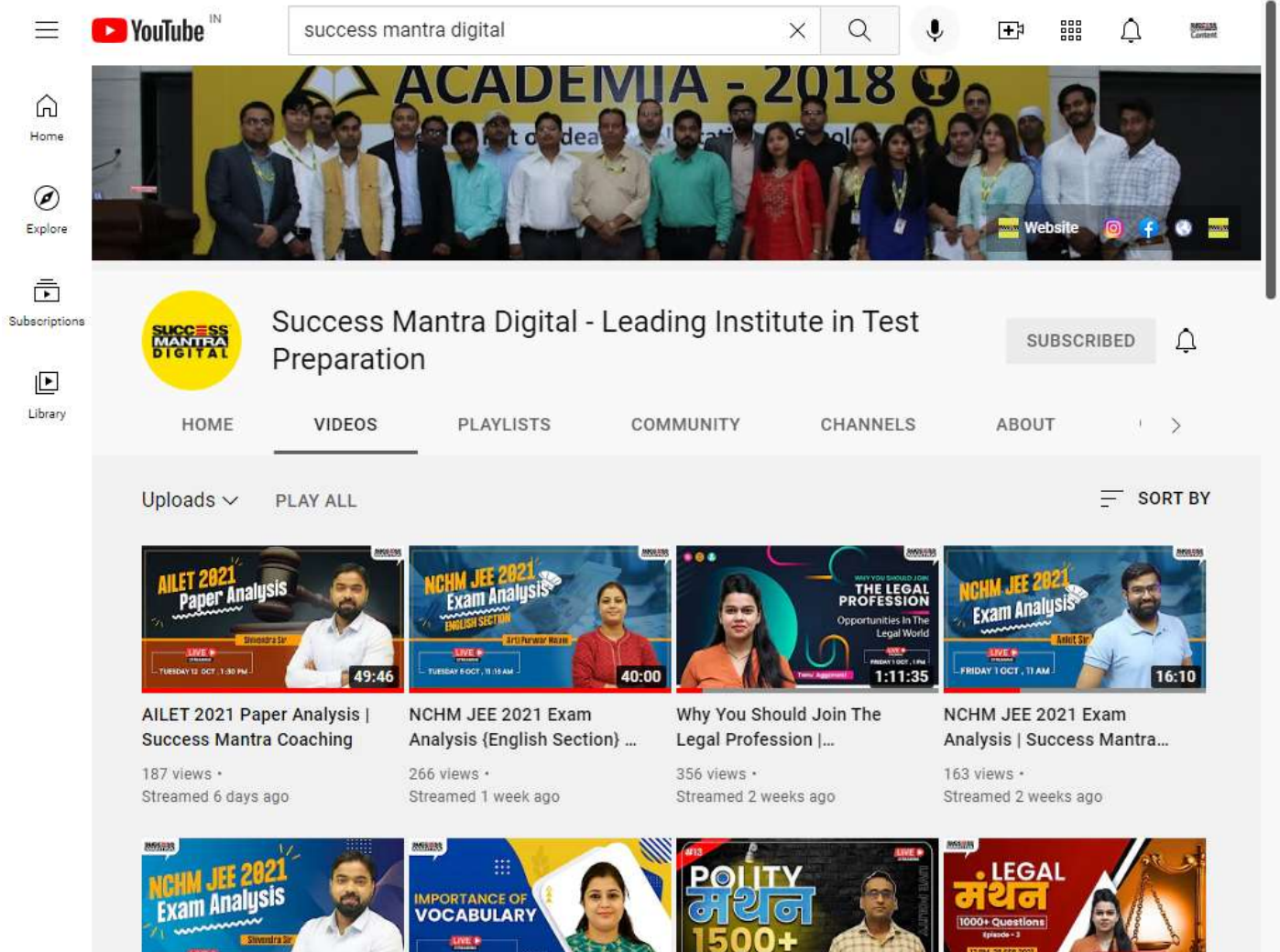
- Lok Sabha MPs have to recommend the **district authorities projects in their Lok Sabha constituencies**, while **Rajya Sabha MPs** have to **spend it in the state that has elected them** to the House.
- **Nominated Members** of both the Rajya Sabha and Lok Sabha **can recommend works anywhere** in the country.

Significance of Restoration of the Scheme:

- It will **restart fulfilling the aspirations and developmental requirements of the local community and creation of durable assets**, which is the primary objective of the MPLADS.
- It will also **help in reviving the local economy**.

Issues with MPLADS:

- **Implementation Lapses:** The **Comptroller and Auditor-General of India (CAG)** has flagged instances of financial mismanagement and artificial inflation of amounts spent.
- **No Statutory Backing:** The scheme is not governed by any statutory law and is subject to the whims and fancies of the government of the day.
- **Monitoring and Regulation:** The scheme was launched for promoting participatory development but there is no indicator available to measure level of participation.
- **Breach of Federalism:** MPLADS encroaches upon the domain of local self governing institutions and thereby violates **Part IX and IX-A** of the Constitution.
- **Conflict with Doctrine of Separation of Powers:** MPs are getting involved in executive functions.



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