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## **Monthly Compendium (LEGAL AFFAIRS)**

of Current Affairs by **SUCCESS MANTRA** (GTB Nagar)

# LEGAL AFFAIRS

**AUGUST 2022**

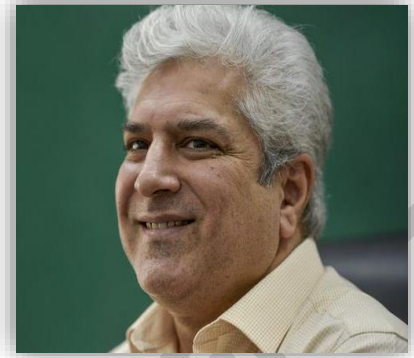
SUCCESS MANTRA

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## #FOREIGN VISITS OF STATE GOVERNMENT MINISTERS

Recently, Delhi's Chief Minister was **denied permission to attend the World Cities Summit in Singapore**.

Also, the state transport minister of Delhi filed a plea in Delhi high court to set aside the need for travel clearances by the Centre for private foreign visits of State government Ministers.



### What's the Issue?

- The CM of Delhi was invited by the Singapore government to participate in the **world cities conference** but his clearance to visit was denied by the central government.
- Further, the central government said the trip to Singapore was "not advisable," noting that it was **mostly attended by mayors and that, in any case, urban governance in Delhi was not solely the responsibility of the state government**.
- Also, in 2019 the Delhi Chief Minister's proposed visit to Copenhagen for attending the 7<sup>th</sup> **C-40 World Mayors Summit** was rejected by the MEA without providing any reason.

### Under which Provisions are approvals Required?

- In 1982 the **cabinet secretariat** issued guidelines regarding foreign travel of Ministers of State government and Union Territories and State government officials.
- Foreign visits by members of the State governments in their official capacity would require **clearances from the Ministry of External Affairs (MEA), Ministry of Home Affairs, Finance Ministry, and the Central Administrative Ministry**.
- Further, another order circulated in 2004, modifying the provisions to the extent that the final orders were to be issued by the Finance Ministry.
- It stated that Chief Ministers required **further approval from the Prime Minister's Office** before an official visit.
- Again in 2010, another directive was issued that made political clearances mandatory before private visits of Ministers in State governments.

### On what Grounds has the Petition been Filed?

- **Violates Right to Privacy:** Requiring permission for visiting abroad by state government Ministers violates their right to privacy and dignity of their constitutional office.
- **Beyond Jurisdiction of Governor's Office:** It argues that **Governor** advising against the proposed Singapore visit is beyond the jurisdiction of his office's authority.
- **Violates Article 21:** The use of arbitrariness and unaccountable implementation of power by the Governor and Central Government is **against national interest and good governance** and **impinges upon the right to travel abroad as guaranteed under Article 21**.

## #WHAT IS HATE SPEECH & BALSPEMRY

Recently, there has been a rise in cases related to **Hate Speech, Blasphemy** in India.

### What is Hate Speech?

- According to the 267<sup>th</sup> **Report of the Law Commission of India**, **Hate Speech** is stated as an incitement to hatred primarily against a



group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief, and the like.

- Thus, hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence.

### What is the Regulations Related to Blasphemy?

- **Section 295(A) of the Indian Penal Code (IPC)**, punishes any speech, writings, or signs that “with premeditated and malicious intent” insult citizens’ religion or religious beliefs with a fine and imprisonment for up to three years.

### SC Interpretation:

- **Ramji Lal Modi case (1957):** The legality of Section 295(A) was **affirmed by a five-judge Bench of the Supreme Court in this case. Supreme court reasoned that while Article 19(2) allows reasonable limits on freedom of speech and expression for the sake of public order.** The punishment under Section 295(A) deals with aggravated form of blasphemy which is committed with the malicious aim of offending the religious sensibilities of any class.
- **Superintendent, Central Prison, Fatehgarh Vs Ram Manohar Lohia case (1960):** It stated that the **link between the speech spoken and any public disorder caused as a result of it** should have a close relationship for retrieving Section 295(A) of IPC. Further in 2011, it concluded that only speech that amounts to “incitement to impending unlawful action” can be punished. That is, the **state must meet a very high bar before using public disturbance as a justification for suppressing expression.**

## #WITHDRAWAL OF PERSONAL DATA PROTECTION BILL

- The government of India has withdrawn the **Personal Data Protection Bill** from **Parliament** as it considers a “**comprehensive legal framework**” to regulate the online space to boost innovation in the country **through a new bill.**



### What was the Personal Data Protection Bill

- **The Personal Data Protection Bill, 2019** was introduced in **Lok Sabha** by the Minister of Electronics and Information Technology, on December 11, 2019.
- Commonly referred to as the “**Privacy Bill**”, it intended to **protect individual rights** by regulating the collection, movement, and processing of data that is personal, or which can identify the individual.

### Why has the Bill been withdrawn?

- **Too Many Amendments:** The **Joint Committee of Parliament** analyzed the Personal Data Protection Bill, 2019 in detail. **81 amendments were proposed and 12 recommendations were made** towards a comprehensive legal framework on the **digital ecosystem**. Considering the report of the JCP, **a comprehensive legal framework is being worked upon.** Hence, it is proposed to withdraw.

### Issues with Data Localisation:

- The tech companies questioned a proposed provision in the Bill called **Data Localisation.**
- Under data localisation, it would have been **mandatory for companies** to store a copy of certain sensitive personal data **within India**, and the **export of undefined “critical” personal data** from the country

would be **prohibited**. The activists had criticised that it **would allow the central government** and its agencies blanket exemptions from adhering to any and all provisions of the Bill.

## #MOTHER'S RIGHT TO DETERMINE SURNAME OF CHILD

Recently, the **Supreme Court** ruled that the mother, being the only natural guardian of the child after the death of the biological father (husband), has the **right to decide the surname of the child**.

The court was dealing with a plea challenging a judgement passed by the High Court of Andhra Pradesh in January 2014, which asked to **restore the child's surname to the previous one** and to show **the name of the late husband in records** as his natural father and if that is not possible, **to mention the new husband as his stepfather**.

### What did the SC Rule?

- Surname is **not only indicative of lineage and should not be understood just in the context of history, culture and lineage** but more importantly the role it plays with regard to the **social reality along with a sense of being for children** in their particular environment.
- Homogeneity of surname emerges as a **mode to create, sustain and display 'family'**.
- The SC also opined that the mother, being the only natural guardian, also has the **right to give up the child in adoption**.

### What are the Laws Related to Guardianship in India?

#### Hindu Minority and Guardianship Act:

- **Indian laws accord superiority to the father** in case of guardianship of a minor (below the age of 18 years).
- Under the religious law of Hindus, or the **Hindu Minority and Guardianship Act, (HMGA) 1956**, the natural guardian of a Hindu minor in respect of the minor's person or property **"is the father, and after him, the mother**.
- Provided the custody of a minor who has not completed the age of five years shall ordinarily be with the mother."

#### Guardian and Wards Act of 1890 (GWA):

- It deals with the **appointment of a person as a 'guardian' to a child**, both with respect to the child and property.
- Child custody, guardianship and visitation issues between parents are determined under the GWA, if a natural parent wants to be declared as an exclusive guardian to his/her own child.
- Upon disputes between parents in a petition under the GWA, read with the HMGA; **guardianship and custody can be vested with one parent with visitation rights to the other parent**.
- In doing so, the welfare of the minor or **"best interests of the child"** shall be of paramount consideration.

### What is Understood by 'Best Interests of the Child'?

- India is a signatory to the **United Nations Convention on the Rights of the Child (UNCRC)**.
- The definition of "best interests of the child" has been incorporated from the **Juvenile Justice (Care and Protection of Children) Act, 2015**.
- The "best interests of the child" means **"the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development"** and is paramount in any custody battle.



### Muslim Personal Law (Shariat) Application Act, 1937:

- It says that the Shariat or the religious law will apply in case of guardianship according to which the **father is the natural guardian**, but **custody vests with the mother until the son reaches the age of seven** and the **daughter reaches puberty** though the father's right to general supervision and control exists.
- The concept of Hizanat in Muslim law states that the welfare of the child is above all else.
- This is the reason why Muslim law **gives preference to the mother over father in the matter of custody** of children in their tender years.

### Supreme Court Judgements:

- The **Supreme Court's landmark judgement in Githa Hariharan v. The Reserve Bank of India** in 1999 provided partial relief.
- In this case, the HMGA was challenged for violating the guarantee of equality of sexes under **Article 14** of the Constitution of India.
- Article 14 says that no person shall be denied treatment of equality before the law or the equal protection of the laws within the territory of India.
- The court held that the term "**after**" should not be taken to mean "after the lifetime of the father ", but rather "**in the absence of the father**".
- However, the judgment failed to recognize both parents as equal guardians, subordinating a mother's role to that of the father.
- Though the judgment sets a precedent for courts, it has **not led to an amendment to the HMGA**.

## #FUNDAMENTAL DUTIES IN INDIAN CONSTITUTION

Recently, **Chief Justice of India** said **Fundamental Duties** in the Constitution are **not merely to serve a "pedantic or technical" purpose**, but they were incorporated as the key to social transformation.

### How was the Fundamental Duties Incorporated?

- The idea of Fundamental Duties is **inspired from the Constitution of Russia (erstwhile Soviet Union)**.
- These were incorporated in **Part IV-A of the Constitution by the 42<sup>nd</sup> Constitutional Amendment Act, 1976** on the recommendations of the **Swaran Singh Committee**.
- Originally 10 in number, one more duty was added through the **86<sup>th</sup> Constitutional Amendment Act, 2002**.
- All the eleven duties are listed in **Article 51-A of the Constitution** (the sole Article in Part-IV-A).
- Like the **Directive Principles of State Policy**, Fundamental duties are also non-justiciable in nature.



### What are the Listed Fundamental Duties?

- To abide by the Constitution and respect its **ideals and institutions, the National Flag and the National Anthem**,
- To cherish and follow the noble ideals **that inspired the national struggle for freedom**,
- To **uphold and protect the sovereignty**, unity and integrity of India,
- To **defend the country and render national service** when called upon to do so,
- To promote **harmony and the spirit of common brotherhood amongst all** the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women,
- To **value and preserve the rich heritage** of the country's composite culture,
- To protect and **improve the natural environment** including forests, lakes, rivers and wildlife and to

have compassion for living creatures,

- To develop scientific temper, humanism and the **spirit of inquiry and reform**,
- To safeguard **public property and to abjure violence**,
- To strive **towards excellence in all spheres** of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement, and
- To provide **opportunities for education to his child or ward between the age of six and fourteen years** (added by the 86th Constitutional Amendment Act, 2002).

### What is the Supreme Court's Stand on Fundamental Duties?

- The Supreme Court's *Ranganath Mishra judgment 2003* held that fundamental duties should **not only be enforced by legal sanctions but also by social sanctions**.
- In *AIIMS Students Union v. AIIMS 2001*, it was held by the Supreme Court that **fundamental duties are equally important as fundamental rights**.
- Though fundamental duties are not enforceable like fundamental rights **they cannot be overlooked as duties in Part IV A**.
- They are prefixed by the same word fundamental **which was prefixed by the founding fathers of the Constitution to 'right' in Part III**.

## #VALIDITY OF CHILD GANG-RAPE LAW

- Recently, a petition was filed by a 29-year-old man, in the **Supreme Court**, who is serving a life sentence, for the gang rape of a nine-year-old in Maharashtra. The **Supreme Court** will examine the validity of a law which sends a guilty man either to a lifetime in prison or to the gallows for gangraping a child under 12 years without affording him a chance to atone for his crime or reform.

### What is the Issues Highlighted in the Petition?

- **Restrict judge's options:** It argued that **Section 376DB (gang rape of a child under 12 years of age)** of the **Indian Penal Code** restricted the trial judge's options to either a **sentence for the remainder of the person's natural life or the death penalty**. However, Life imprisonment is the minimum, mandatory punishment under the provision.
- **Anomaly in 2018 Amendment:** The petitioner further argued that there is **an anomaly in the sentencing system drafted through the criminal amendments carried out in August 2018**. Section 376DB was introduced in 2018 when the penal code was **amended to provide harsher sentences for the offense of rape**.
- **Arbitrariness:** While **Section 376-AB** provided for a **minimum sentence of 20 years for a person convicted of raping an under-12 girl**. Whereas, **Section 376-DB** provides for a **mandatory minimum punishment of life imprisonment for each of the persons involved in the gang rape of an under-12 girl**. Both sections provided the **death penalty as maximum punishment**. This life sentence without remission could mean 60-70 years of jail for a person who is in his twenties.
- **Violates Right to Life:** Section 376DB offered a trial court no option but a life sentence or the higher punishment of the death penalty. The petition argued that Section 376DB violated **Articles 21** (Right to life) and **Article 14** (right to equality) of the Constitution.

### Global Scenario:

Given the global context of this issue, the **European Court of Human Rights** in the case of **winter vs the United Kingdom** ruled that life imprisonment without a real prospect of parole was a violation of Article 3 of the European Convention on Human Rights. It held that life sentences cannot be considered just punishment as they provided the prisoner with no opportunity for atonement and such sentences were incompatible with respect for human dignity. The U.S. Supreme Court had held that in extreme cases, a disproportionate sentence **violated the Eighth Amendment, which prohibits cruel and unusual punishment, of the U.S. Constitution**.

### What are the Other Related Initiatives for Child Protection?

- POSCO (Protection of Children from Sexual Offences).
- Child Abuse Prevention and Investigation Unit.
- Beti Bachao, Beti Padhao.
- Juvenile Justice Act/Care and Protection Act, 2000.
- Child Marriage Prohibition Act (2006).
- Child Labour Prohibition and Regulation Act, 2016.

## #CRIMINAL PROCEDURE IDENTIFICATION ACT, 2022

Recently, the **Criminal Procedure (Identification) Act, 2022** has come into force after being passed by the Parliament in April 2022.

It replaces the **Identification of Prisoners Act, 1920**, a colonial era law, and authorises **police officers to take measurements of people convicted, arrested or facing trial in criminal cases.**

### What is the Criminal Procedure (Identification) Act, 2022?

It provides **Legal sanction to the police to take physical and biological samples of convicts** as well as those accused of crimes.

The police as per section 53 or section 53A of the **Code of Criminal Procedure (CrPC), 1973**, can **collect Data.**

Data that can be collected: Finger-impressions, Palm-Print impressions, Footprint impressions, Photographs, Iris and Retina scan, Physical, Biological samples and their analysis, Behavioural Attributes including signatures, Handwriting or any other examination

CrPC is the **primary legislation regarding the procedural aspects of criminal law.**

Any person convicted, arrested or detained under any preventive detention law will be required to provide "measurements" to a police officer or a prison official.

**National Crime Records Bureau (NCRB) will store, preserve, share** with any law enforcement agency and destroy the record of measurements at national level. The records can **be stored up to a period of 75 years.**

It aims to **ensure the unique identification of those involved with crime and to help investigating agencies solve cases.**

### What is the Need to Replace the Previous Act?

- In 1980, the 87<sup>th</sup> Report of the **Law Commission of India** undertook a review of this legislation and **recommended several amendments.**
- This was done in the backdrop of the State of *UP vs Ram Babu Misra case*, where the **Supreme Court** had highlighted the **need for amending this law.**
- The first set of recommendations laid out the need to amend the Act to **expand the scope of measurements to include "palm impressions", "specimen of signature or writing" and "specimen of voice".**
- The second set of recommendations raised the need to allow measurements to be taken for proceedings other than those under the Code of Criminal Procedure (CrPC).
- The Law Commission Report also notes that the **need for an amendment is reflected by the numerous amendments made to the Act by several States.** It was felt that with advancements in forensics, there is a need to **recognise more kinds of "measurements"** that can be used by law enforcement agencies for investigation.



## #REVIEW OF GUARDIANSHIP & ADOPTION LAWS

Recently, the Parliamentary Standing Committee on Personnel, Public Grievances and Law and Justice tabled a report “**Review of Guardianship and Adoption Laws**” in Parliament and recommended **district-level surveys to identify orphaned and abandoned children**.

In India, there are only 2,430 children available for adoption while the **number of parents desiring to bring home a child is growing rapidly**.



### What are the Key Findings of the Report?

- There were 27,939 prospective parents registered with the **Child Adoption Resource Authority (CARA)** as of December 2021, up from nearly 18,000 in 2017.
- **CARA**, a statutory body of the Ministry of Women & Child Development, functions as the **nodal body for adoption of Indian children and is mandated to monitor and regulate** in-country and inter-country adoptions.
- There was a total of 6,996 orphaned, abandoned and surrendered children residing in childcare institutions considered adoptable, only 2,430 were declared “legally free” for adoption by Child Welfare Committees.
- There are only 2,430 children found to be legally free for adoption in India with an estimated 3.1 crore orphans because of the **failure to bring more children in need of care into the government’s safety net**.
- The waiting time for adoption has increased **to three years from one year** in the past five years.
- The total number of children adopted in 2021-2022 was only 3,175.

### **What are Adoption and Related Rules in India?**

Adoption is the **formal process through which a child is permanently separated from his biological parents** to become the lawful child of his adoptive parents.

The adopted child enjoys all rights, privileges and responsibilities attached to a biological child.

The fundamental principles that **govern adoption state that the interests of the child are most important and preference is to be given to place the child in adoption with Indian citizens** with “due regard to the principle of placement of the child in his socio-cultural environment, as far as possible”.

### Legislations:

- The **Hindu Adoption and Maintenance Act, 1956 (HAMA)**: Under the Act, a Hindu parent or guardian can give a child in adoption to another Hindu parent. The Act does not allow the adoption of an orphaned, abandoned or surrendered child who is in the care of any specialized adoption agency (SSA) or child care institution. Inter-country adoptions don’t come under the purview of this Act.
- **The Juvenile Justice (Care and Protection of Children) Act, 2015**. This includes Juvenile Justice (Care and Protection of Children) Model Rules, 2016 and Adoption Regulations, 2017. As per the government rules, **Hindus, Buddhists, Jains, and Sikhs are legalized to adopt kids**. An orphan, abandoned, or surrendered child who **has been declared legally free** for adoption by the **Child Welfare Committee (CWC)** can be adopted.

## #WHAT IS MODEL TENANCY ACT

According to Ministry of Housing and Urban Affairs (MoHUA), Model Tenancy Act has been rectified by only four states, i.e., Andhra Pradesh, Tamil Nadu, Uttar Pradesh, and Assam.

### What is the Model Tenancy Act?

**The Model Tenancy Act, 2021** is to establish Rent Authority to regulate renting of premises and to protect the interests of landlords and tenants and to provide speedy adjudication mechanism for resolution of disputes and matters connected therewith or incidental thereto.

- **It aims at creating a vibrant, sustainable, and inclusive rental housing market in the country.**
- It will enable the creation of adequate rental housing stock for all income groups thereby addressing the issue of homelessness.
- It will enable the institutionalization of rental housing by gradually shifting it toward the formal market.

### Key Provisions:

- **Written Agreement is Mandatory:** A written agreement is mandatory between the property owner and the tenant.
- **Establishes Independent Authority and Rent Court:** Establishes an independent authority in every state and UT for registration of tenancy agreements and even a separate court to take up tenancy related disputes.
- **Maximum Limit for Security Deposit:** Limit the tenant's advance security deposit to a maximum of two months' rent for residential purposes and to a maximum of six months for non-residential purposes.
- **Describes Rights and Obligations of both Landlord and Tenant:** The landlord will be responsible for activities like structural repairs except those necessitated by damage caused by the tenant, whitewashing of walls and painting of doors and windows, etc.
- The tenant will be responsible for drain cleaning, switches and socket repairs, kitchen fixtures repairs, replacement of glass panels in windows, doors and maintenance of gardens and open spaces, among others.
- **24-hour Prior Notice by the Landlord:** A landowner will have to give 24-hour prior notice before entering the rented premises to carry out repairs or replacement.
- **Mechanism for Vacating the Premises:** If a landlord has fulfilled all the conditions stated in the rent agreement - giving notice etc.- and the tenant fails to vacate the premises on the expiration of the period of tenancy or termination of tenancy, the landlord is entitled to double the monthly rent for two months and four times after that.

### What was the Need for Model Tenancy Act?

- The existing rent control laws are restricting the growth of rental housing and discourage owners from renting out their vacant houses due to fear of repossession.
- One of the potential measures to unlock the vacant house is to bring transparency and accountability to the existing system of renting premises and to balance the interests of both the property owner and tenant in a judicious manner.
- As per Census 2011, more than 1 crore houses were lying vacant in urban areas.
- Earlier, almost a third of all Indians were living in urban areas, their proportion rising from 31.16% in 2011 to 27.82% in 2001. By 2050, more than half of India would be living in cities or towns, mainly due to migration.

## #PARLIAMENTARY PRIVILEGES TO MEMBER OF PARLIAMENT

- Recently, **Vice President of India** highlighted the wrong assumptions of MP about the **Parliamentary privileges**, that **action can't be taken against them by investigating agencies during a Parliamentary session**.
- There have been protests by some political parties against the alleged misuse of central agencies like the **Enforcement Directorate (ED)**, **Central Bureau of Investigation (CBI)**, and the **Income Tax department (IT)** by the government to frame political rivals.

### What are the Parliamentary Privileges?

Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members.

These privileges are defined in **Article 105 of the Indian Constitution**.

Under these privileges, the members of Parliament are exempted from any civil **liability (but not criminal liability)** for any statement made or act done in the course of their duties.

The privileges are claimed only when the person is a member of the house.

As soon as he/she tends to be a member, the privileges are said to be called off.

**Parliament has not made any special law** to exhaustively codify all the privileges. They are **rather based on five sources**:

- Constitutional provisions
- Various laws made by Parliament
- Rules of both the Houses
- Parliamentary conventions
- Judicial interpretations

### Privileges:

- **Freedom of Speech in Parliament:** The freedom of speech and expression guaranteed to a citizen under **Article 19(2)** is different from the freedom of speech and expression provided to a member of the parliament. It has been guaranteed under Article 105(1) of the Indian constitution. But the freedom is subject to rules and orders which regulate the proceedings of the parliament.
- **Limitations:** Freedom of speech should be in accordance with the constitutional provisions and subject to rules and procedures of the parliament, as **stated under Article 118 of the Constitution**.
- Under **Article 121 of the Constitution**, the members of the parliament are restricted from discussing the conduct of the judges of the **Supreme Court** and the High Court.
- **Freedom from Arrest:** The members enjoy freedom from arrest in any **civil case 40 days before and after the adjournment of the house and also when the house is in session**. **No member can be arrested from the limits of the parliament without the permission of the house** to which s/he belongs so that there is no hindrance in performing their duties.
- **Right to Prohibit the Publication of Proceedings:** **Article 105(2)** of the Constitution, **no person shall be held liable for publishing any reports, discussions etc. of the house under the authority of the member of the house**. For paramount and national importance, it is essential that the proceedings should be communicated to the public to aware them of what is going on in the parliament.
- **Right to Exclude Strangers:** The members of the house have the **power and right to exclude strangers** who are not members of the house from the proceedings. This right is very **essential for securing free and fair discussion** in the house.

## #WHAT IS PESA ACT?

- Electoral Parties are trying to woo tribals in Gujarat by making promises to strictly implement the **Panchayat Extension to Scheduled Areas (PESA) Act, 1996**.
- Gujarat notified the State PESA Rules in January 2017 and made them applicable in 4,503 gram sabhas under 2,584 village panchayats in 50 tribal talukas in eight districts of the state.
- However, the Act has not been **enforced in letter and spirit**.
- Six states (Himachal Pradesh, Andhra Pradesh, Telangana, Rajasthan, Gujarat, and Maharashtra) have formed the PESA laws, and Chhattisgarh would become the seventh state if the rules are enacted.



### What is the PESA Act?

- The PESA Act was enacted in 1996 “to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas”.
- **Part IX, comprising Articles 243-243ZT** of the Constitution, contains provisions **relating to municipalities and cooperative societies**.

### Provisions:

- Under the Act, **Scheduled Areas are those referred to in Article 244(1)**, which says that the provisions of the **Fifth Schedule shall apply to the Scheduled Areas and Scheduled Tribes in states other than Assam, Meghalaya, Tripura, and Mizoram**.
- The Fifth Schedule **provides for a range of special provisions for these areas**. Ten states — **Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana** — have notified Fifth Schedule areas that cover (partially or fully) several districts in each of these states.

### Objectives:

- To ensure **self-governance through Gram Sabhas (village assemblies)** for people living in the **Scheduled Areas**.
- It recognises the **right of tribal communities, who are residents of the Scheduled Areas**, to govern themselves through their own systems of self-government, and also acknowledges their traditional rights over natural resources.
- Empowers Gram Sabhas to play a key role in approving development plans and controlling all social sectors.
- **How are Tribals and their Rights Protected in India?**
- In India, most of the **tribes are collectively identified under Article 342 (1&2) as "Scheduled Tribes"**.
- Their right to self-determination is **guaranteed by Part X: The Scheduled and Tribal Areas – Article 244: Administration of Scheduled Areas and Tribal Areas**.
- That is, **Fifth and Sixth Schedules** of the Indian Constitution.
- The Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 or PESA.
- The **Tribal Panchsheel Policy**
- **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006** concerns the rights of forest-dwelling communities to land and other resources.

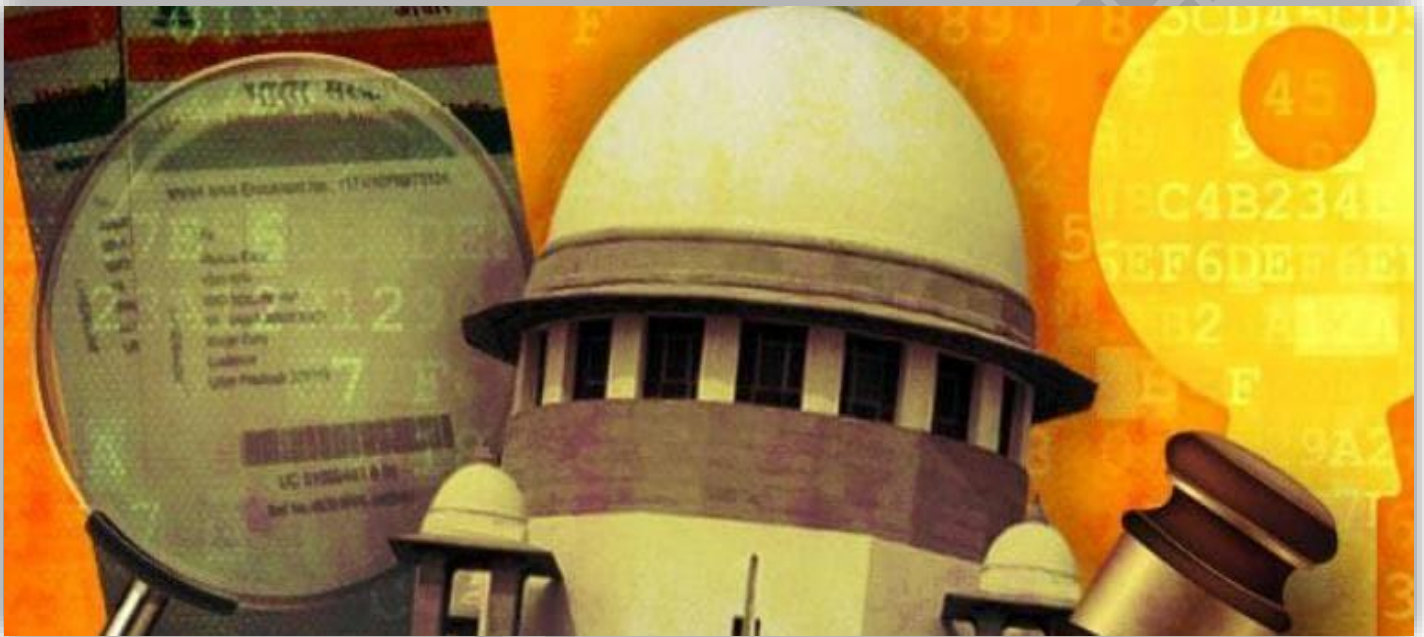


## #CONSTITUTIONAL BENCH OF SUPREME COURT

Justice Uday Umesh Lalit, 49<sup>th</sup> Chief Justice of India (CJI), assured there will be at least one Constitution Bench functioning throughout the year in the Supreme Court.

### What is the Constitutional Bench of the Supreme Court?

- A Constitution Bench is a bench of the Supreme Court **having five or more judges on it.**
- These benches are not a routine phenomenon.
- A vast majority of cases before the Supreme Court are heard and decided by a bench of two judges (called a Division Bench), and sometimes of three.



### Circumstances for Constitutional Bench to Exist:

- **Article 145(3):** Article 145(3) provides, "The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five."
- **Article 143:** When the **President seeks the Supreme Court's opinion** under law under **Article 143** of the Constitution. As per the provision, the President of India **has the power to address questions to the Supreme Court**, which he deems important for public welfare.

### Conflicting Judgments:

- When two or more three-judge benches of the Supreme Court have **delivered conflicting judgments** on the same point of law, necessitating a definite understanding and interpretation of the law by a larger bench.
- The Constitution benches are **set up on ad hoc basis** as and when the above-mentioned conditions exist.

### Why does CJI seek a Permanent Constitutional Bench?

- Presently, Constitution Benches are set up on an **ad hoc basis (particular purpose)** as and when the need arises.
- It aims to help the judges **identify, hear and provide relief** in cases which need their urgent attention and also help **litigants and lawyers to avoid delay in getting their cases listed for hearing before**



**judges** due to the long-winded processes of the Supreme Court Registry.

- It is also imperative because the Supreme Court's pendency has crossed **over 71,000 from a little over 55,000 in 2017**.
- This is despite the fact that the sanctioned judicial strength of the court was increased to 34 judges in August 2019.

## #FORESTS & JURISDICTIONS

Recently, the **Ministry of Environment, Forest and Climate Change** has objected to Chhattisgarh for its transfer of land without following due process from its Forest to the Revenue Department.

### What is the Background?

- In March 2022, Chhattisgarh Chief Minister announced in his Budget speech that the state government has transferred over 300 sq km — an area larger than Raipur — in the Bastar region from the Forest department to the Revenue department to ensure easy availability of land for setting up industries and building infrastructure.
- In August 2022, the Union Environment Ministry's Integrated Regional Office asked the state to stop the transfer of land, saying it was in violation of the **Forest Conservation Act, 1980** and multiple Supreme Court orders, and return the land already transferred.
- The move has now run into a hurdle, even as paperwork is underway for transferring more land to other parts of the state.



### Jurisdiction:

- Forests are included in the **Concurrent List in the (Seventh Schedule)** of the Constitution of India.
- Through the **42<sup>nd</sup> Amendment Act, 1976** Forests and Protection of Wild Animals and Birds were transferred from **State to Concurrent List**.
- State Forest Departments have jurisdiction over two types of forests notified under the **Indian Forest (IF) Act, 1927: Reserve Forests (RF)**, where no rights are allowed unless specified, and **Protected Forests (PF)**, where no rights are barred unless specified. Certain forests, such as villages or nagarpalika forests, are managed by state **Revenue Departments**.

### Legislations:

- **Article 51 A (g)** of the Constitution states that it shall be the **fundamental duty** of every citizen to protect

and improve the natural environment including forests and Wildlife.

- **Article 48 A** in the **Directive Principles of State policy**, mandates that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

### What are the Policies Governing India's Forests?

- **Indian Forest Policy, 1952**
- **Forest Conservation Act, 1980**
- **National Forest Policy, 1988**
- **National Afforestation Programme**
- **Wildlife Protection Act of 1972**
- **Environment Protection Act of 1986**
- **Biodiversity Diversity Act of 2002**
- **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

## #SPECIAL MARRIAGE ACT, 1954

Recently, the **Supreme Court (SC)** dismissed a writ petition challenging **provisions of the Special Marriage Act (SMA), 1954** requiring couples to give a notice declaring their intent to marry 30 days before their marriage.

The SC Rejected the petition on the grounds that the petitioner was **no longer an aggrieved party** as she had **already solemnised her marriage under SMA**.

### What does the Petition Seek?

- The petition challenged the **Constitutional validity of certain provisions of the SMA**, calling it **violative of the right to privacy guaranteed under Article 21** of the Constitution.
- It is because these provisions **require couples to give notice 30 days before the date of marriage inviting objections** from the public. These provisions contravene Article 14 on right to equality as well as Article 15 on **prohibition of discrimination on grounds of religion, race, caste and sex** as these requirements are absent in personal laws.

### Which Provisions are challenged and how do they Make Couples Vulnerable?

- Section 5 of the SMA requires **couples getting married under it to give a notice to the Marriage Officer 30 days before** the date of marriage.
- The Petition seeks striking down of provisions that follow in **Section 6 to Section 10**.
- **Section 6** requires such a notice to be then entered into the Marriage Notice Book maintained by the Marriage Officer, which can be inspected by "any person desirous of inspecting the same."
- **Section 7** provides the process for making an objection.
- **Section 8** specifies the inquiry procedure to be followed after an objection has been submitted.
- The petition contends that these provisions **make the personal information** of the individuals **open to public scrutiny**.
- Hence, these provisions seriously damage one's right to have control over her/his personal information and its accessibility.
- By making the personal details of the couple accessible to everyone, the very right of the couple to be the decision makers of their marriage is **being hampered by the state**.
- These public notices have been used by **anti-social elements to harass couples getting married**.
- There have been instances where **marriage officers have gone over and beyond the law and sent such notices to the parents** of the couple leading to the girl being confined to her house by her parents.

### What is the Special Marriage Act (SMA), 1954?

- **About:** Marriages in India can be registered under the respective personal laws **Hindu Marriage Act, 1955, Muslim Marriage Act, 1954**, or under the **Special Marriage Act, 1954**.

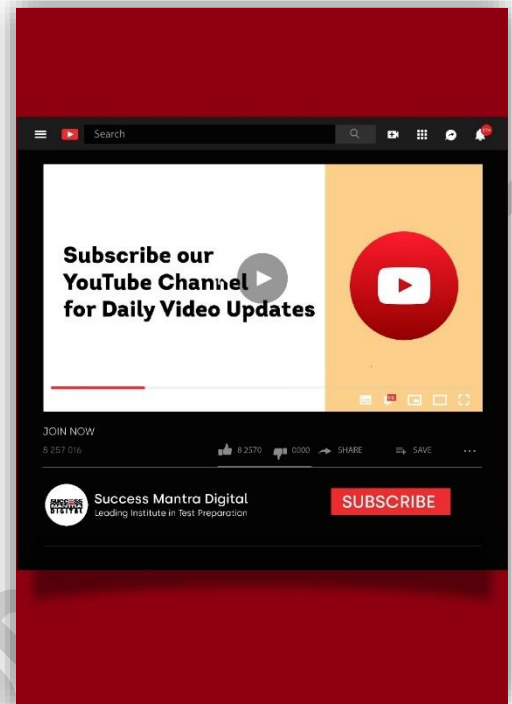
- **It is the duty of the Judiciary to ensure that the rights** of both the husband and wife are protected.
- The **Special Marriage Act, 1954** is an Act of the Parliament of India with **provision for civil marriage for people of India** and all Indian nationals in foreign countries, **irrespective of religion or faith followed by either party**.
- When a person solemnises marriage under this law, then the marriage is **not governed by personal laws but by the Special Marriage Act**.

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