Current Social Issues

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Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

What is Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act?

The Scheduled Castes and Tribes (Prevention of Atrocities) was enacted in 1989. The rules for the Act were notified on March 31, 1995. The act guarantees fundamental right under **Article 17** of the **Constitution** which abolished untouchability and forbids its practice in any form.

The Act lists 22 offences which hurt the self-respect and esteem of the scheduled castes and tribe's community. This includes denial of economic, democratic and social rights, discrimination, exploitation and abuse of the legal process.

What are Supreme Court's Guidelines?

In March 2018, the Supreme Court of India issued three important guidelines to prevent misuse of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1985. These guidelines nullify key provisions of this law by

1. removing the bar on grant of anticipatory bail,
2. providing for prior permission for arrests under this act. (Public servants can only be arrested with the written permission of their appointing authority. In cases where the accused is a private employee, the police can make an arrest only after approval by a senior superintendent of police), and
3. stating that Police may conduct a preliminary inquiry to ascertain the veracity of the complaint.

Why did the Supreme Court give above Guidelines?

1. The Act has been misused to file false complaints for vengeance.
2. There were cases of implication of innocent citizens.
3. Any harassment of an innocent citizen, irrespective of caste or religion, is against the fundamental rights guaranteed by the Constitution **(Article 21: Right to Life and Personal Liberty).** Hence, Supreme Court of India gave these guidelines.

Parliament Passes Amendment Act Restoring Original Position:

The judgement of the Supreme Court had led to mass protests and violence which claimed several lives across the country. Dalits and the Opposition parties claimed that the dilution of the Act will lead to more discrimination and crimes against the SC's and ST's. In response, the Centre, in April 2018, filed a petition to review the judgement.

Supreme Court Agreed to Hear Review Petition:

The Bench declined to suspend the order but agreed to hear the petition to review its own March 20, 2018 order in the wake of widespread protests against the dillution of the provisions of the Act. The Bench clarified that its objective was to safeguard the innocent and that it has not diluted the Act or undermined the rights of SCs and STs in any way.

Union Government's Arguments in Supreme Court:

1. **Reason for prohibiting anticipatory bail:** The Centre submitted that judgement encroached on legislative terrain. The 1989 law, in fact, prohibits anticipatory bail, stating that an accused on bail may use his liberty to terrorize his victims. The Centre argued that the denial of anticipatory bail was the very 'backbone' of the 1989 law.
2. **Potential for misuse was not a valid ground:** Potential for misuse was not a valid ground for diluting stringent provisions of the Act which would deprive SC, ST communities the rights guaranteed under the Constitution (Article 17 of the Constitution).
3. **Continuing offences:** Referring to statistics, the Centre's petition said offences against SCs and STs have been disturbingly continuing. According to data of the National Crime Records Bureau (NCRB), 47,388 cases were registered in the country under the Act during 2016. Further, only 24.9% of the said cases ended in conviction and 89.3% were pending in courts at the end of the year 2016.
4. **Low Conviction Rates:** The government contended that low conviction and high acquittal rate in cases under PoA Act is due to several factors like delay in lodging FIR and witnesses and complainants

becoming hostile, absence of proper scrutiny of the cases by the prosecution before filing the charge sheet in the court, lack of proper presentation of the case by the prosecution and appreciation of evidence by the Court.

5. **Need for Quick FIRs:** Since offences of atrocities affect dignity and life of members of SC and ST, FIR needs to be registered at the earliest, so that the investigation commences fast without any room for accused to seek anticipatory bail and that admissible relief amount due to be paid to the victim/dependent, on registration of the FIR is also timely paid.
6. **Need to Avoid Delays:** Procedural checks like preliminary enquiry ordered by the court would tend to reduce the rates of registration of cases, conviction, increase pendency and per se would act as deterrent in even filing of FIRs.
7. **Vulnerability:** Centre also said that despite various measures to improve the socio-economic conditions of the SCs and STs, they still remained vulnerable. They are denied a number of civil rights. They are subjected to various offences, indignities, humiliations and harassment.

In spite of above measures by the Government, the Dalit and Adivasi rights organisations were not satisfied and observed May 1 as 'National Resistance Day'. Protest meetings held across the country had three demands for the government: neutralise the Supreme Court order through an ordinance that would reinstate both the SC/ST Act and the SC/ST Amendment Act, 2015, in their original form; include both these laws in the Ninth Schedule to protect them from judicial review; and release all the Dalits arrested on April 2 when a 'Bharat Bandh' was observed to protest this Supreme Court order.

Finally, in August 2018, the Parliament passed an amendment bill to restore key provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act that were struck down by the Supreme Court in March 2018. Preliminary enquiry shall not be required for registration of an FIR against any person, investigating officer shall not require approval for the arrest and section 438 of the CrPC which deals with anticipatory bail shall not be applicable to cases under this act

Conclusion:

In the entire issue, there is clash of rights: protecting the innocent against harassment and misuse of a law, and faithfully preserving the letter and spirit of a legislation aimed at upholding the rights and dignity of the historically oppressed classes (Article 17). Neither should be sacrificed for the sake of the other.

Possible Questions:

Analyse the recent (2018) amendments to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. 150 Words. 10 Marks

Constitutional Status to National Commission for Backward Classes (NCBC)

In August 2018, the Parliament passed 123rd constitutional amendment Bill to grant constitutional status to the **National Commission for the Backward Classes (NCBC)** on par with similar commissions for the scheduled castes (SCs) and scheduled tribes (STs). Until now, the National Commission for the Scheduled Castes (under clause (10) of article 338) was empowered to look into the complaints and grievances of the OBCs. The 123rd constitutional amendment Bill inserted 338 B in the constitution to establish **National Commission for the Backward Classes (NCBC)** as a **constitutional** body which consists of a Chairperson, Vice-Chairperson and three other Members.

How is it Different from the earlier set up ?

The earlier NCBC can only recommend inclusion and exclusion of castes from the OBC list and the level of income that cuts off the "creamy layer" among these castes from the benefits of reservation.

With Constitutional status, people belonging tobackward classes will get **effective grievance redressal mechanism.**

1. The Commission will have power to
   - investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law.
   - inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes, and
   - advice on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State

2. The Commission will have all the powers of a civil court in discharge of its functions. It can summon anyone, require documents to be produced, and receive evidence on affidavit.

3. The Union and every State Government shall consult the Commission on all major policy matters affecting socially and educationally backward classes.

4. State governments have their own lists of castes of OBC people, while the Centre had its own. The NCBC would recommend only to the central government regarding inclusion or deletion of a particular caste in the list.

Additional Information:

Background:

In the year 1992, the Supreme Court of India in the matter of Indra Sawhney and others Vs. Union of India and had directed the Government of India to constitute a permanent body for entertaining, examining and recommending requests for inclusion and complaints of over-inclusion and under-inclusion in the Central List of Other Backward Classes.

Pursuant to the said Judgment, the National Commission for Backward Classes Act was enacted in April, 1993 and the National Commission for Backward Classes was constituted on 14th August, 1993 under the said Act.

The functions of the National Commission for Backward Classes were limited to examining the requests for inclusion of any class of citizens as a backward class in the Lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate. Now, in order to safeguard the interests of the socially and educationally backward classes more effectively, it is proposed to create a National Commission for Backward Classes with constitutional status on par with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.

Under clause (10) of article 338 of the Constitution, the National Commission for Scheduled Castes is presently empowered to look into the grievances and complaints of discrimination of Other Backward Classes also.

The National Commission for the Scheduled Castes has recommended in its Report for 2014-15 that the handling of the grievances of the socially and educationally backward classes under clause (10) of article 338 should be given to the National Commission for Backward Classes.

Question:

Recently, the Parliament passed the 123rd constitutional amendment bill giving constitutional status to National Commission for the Backward Classes (NCBC). How is it an improvement over present mechanism. 150 Words. 10 Marks.

Agitations for Reservations

Marathas in Maharashtra have been agitating demanding reservations in educational institutions and employment opportunities.

In June 2014, Congress-NCP government approved 16 per cent reservation for Marathas and five per cent for Muslims in government jobs and educational institutions. Maratha community was treated as **educationally and socially backward** while for Muslims criteria was not religion-based but on the criterion of **social and economic backwardness.** Already, the state has 52 per cent quotas for various other sections and with reservations for Marathas and Muslims, the reservation in jobs and educational institutions in Maharashtra will go up to 73 per cent.

Constitutional Provisions:

The Government stated that quota for Marathas and Muslims is as per Article 16 (4) and 15 (4) of the Constitution of India.

Article 15 (4): State, by a law, can provide for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes through reservation in **admissions in educational institutions.**

Article 16 (3): State can provide **reservation in appointments or posts** for any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Reservation Quashed:

In November 2014, the Bombay high court stayed the 16% reservation for Marathas faulting the data used by the state to back its assertion that the Maratha community was backward.

It had also put on hold the 5% quota in public employment under a special backward class category to about 50 sub-castes among Muslims. However, the high court had not disturbed a similar benefit for backward Muslims in state-owned or aided educational institutions. The matter is still pending in the high court.

Paradox of Reservations:

Reservations were seen as a tool to eliminate the educational and economic backwardness of the society. They were meant to mainstream the marginalized sections of the society by providing them quotas in educational institutions and employment opportunities. These were initially extended to scheduled castes (SCs) and scheduled tribes (STs). Later, with Mandal commission recommendations, these were also extended to Other Backward Classes (OBCs) at central level. Various state governments have also provided reservations for Other Backward Classes (OBCs) in addition to scheduled castes (SCs) and scheduled tribes (STs).

But of late there are increasing demands from landed communities in various states across the country for reservation benefits. Marathas in Maharashtra, Kapus in Andhra Pradesh, Patels in Gujarat and Jats in Haryana have been demanding reservations under Other Backward Classes (OBCs) category. Besides Gurjars in Rajasthan have been demanding status of Schedule Tribe (ST). In a way these demands are such that forward communities want to become backward and backward communities want to be put under severe backward or lesser category.

The following are reasons for increasing demands from forward communities.

- Agriculture is increasingly becoming unremunerative. It is not seen as a viable economic activity by this community.
- Educated young people from this community are not getting jobs which match their qualifications. Hence, there is aspiration that if they have reservation facilities like those extended to Other Backward Classes (OBCs), it would advance not only their educational opportunities in professional courses like engineering and medicine but also their employment prospects.

SC Judgement on Reservations:

In 1993, the Supreme Court in Mandal case judgment (Indra Sawhney case) ruled that the total reservation for SC/ST and other backward classes or special categories should not exceed 50 per cent. But in an order in July 2010, it allowed states to exceed the 50 per cent limit for reservation, provided they had solid scientific data to justify the increase.

Why 50 per cent cap?

Article 16 (1) of the constitution provides for equality of opportunities while Article 16(4) permits reservations as an exception to promote social justice. So, a balance has to be struck between the constitutional values of equality and social justice. Hence, 50 per cent cap on reservations was imposed.

Moreover, article 335 of the constitution deals with principle of efficiency while providing employment opportunities for scheduled castes (SCs) and scheduled tribes (STs). So, there has to be a overall balance among constitutional values of equality, efficiency and social justice when reservations are provided.

States which crossed 50 per cent Quota:

Tamil Nadu State provides reservation up to 69 per cent (SC-18 per cent, ST-one per cent, OBC-50 per cent). The Indra Sawhney Case posed a threat to the Tamil Nadu reservation formula. To protect these reservations, Parliament placed Tamil Nadu quota legislation in the Ninth Schedule of the Constitution. Laws placed in the Ninth Schedule were considered to be immune from judicial review. However, this issue is still pending adjudication before a three-judge Bench as the supreme court has ruled that even laws placed in Ninth schedule will not be immune from judicial review if they violate the basic structure of the constitution.

Maharashtra :

In the case of public employment, 52 per cent reservation is in place for backward classes under a 2001 State Reservation Act.

Other states: Similarly Jharkhand provides 62 per cent reservation and Karnataka provides 58 per cent reservation.

Additional information:

Existing Reservations in Maharashtra:

The existing reservations for various communities in Maharashtra are as follows:

Scheduled Caste : 13 percent

Scheduled Tribe : 7 percent

Other Backward Classes : 19 percent

Special Backward Classes : 2 percent

Nomadic Tribes A : 3 percent

Nomadic Tribes B : 2.5 percent

Nomadic Tribes C Dhangar : 3.5 percent

Nomadic Tribes D Vanjari : 2 percent

Total : 52 percent

Question:

Discuss the reasons for increasing demands for reservations in our country and also legal and constitutional challenges in meeting the reservation demands. *250 Words. 15 Marks.*

Interference by Khap Panchayats in Marriages of Consenting Adults Illegal : Supreme Court

In a landmark ruling delivered on March 27, 2018, the Supreme Court of India ruled that interference by Khap Panchayats in marriages of consenting adults is illegal. The Court also laid down a set of guidelines to stop interference by khap panchayats which would remain in force till a suitable legislation is enacted by the Parliament.

Background of the Ruling :

The ruling came in a case filed by an NGO Shakti Vahini which in 2010 moved the top court seeking directions from the central and state governments to prevent and control honour killings by such panchayats.

Details :

The Supreme Court (SC) ruled that

- fundamental right of two people who wish to get married to each other and live peacefully is absolute.
- any attempt by khap panchayats to end a marriage between consenting adults is illegal.
- Honour killing guillotines individual liberty, freedom of choice and one's own perception of choice. When two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Articles 19 and 21 of the Constitution. Such a right has the sanction of the constitution and once that is recognised, the right needs to be protected and it cannot succumb to the conception of class honour or group thinking.

What are 'Khap' panchayats ?

- 'Khap' panchayats are caste or community groups, present largely in rural areas of north India which at times act as quasi-judicial bodies and pronounce harsh punishments based on age-old customs. Several cases of women and men falling victim to ' khap' diktats have been reported over the years, particularly in states like Haryana, Uttar Pradesh and Rajasthan.
- 'khap panchayats' often decree or encourage honour killings or other institutionalised atrocities against boys and girls of different castes and religions who wish to get married or have married.
- These crimes are committed in the name of defending the honour of a caste, clan or family.
- In the past also Supreme Court (in 2011) declared this is wholly illegal and has to be ruthlessly stamped out. It had noted that there is nothing honourable in honour killing and, in fact, it is nothing but barbaric and shameful murder.

Arguments of Khap Panchayats in Court:

Khap Panchayats defended their role in court on the following grounds :

- These panchayats were age-old traditions and they did now encourage inter-caste marriages.
- They objected to how these panchayats are portrayed as those that incite honour killings and stated that they are the conscience keepers in society.
- They were not opposed to inter-caste or inter-religious marriages. Instead, they were advancing the centuries-old tradition of prohibiting marriages within the same "gotra' (lineage).
- The objection of khap panchayats about marriages between people from the same gotra is upheld in Section 5 of the Hindu Marriage Act of 1955. The section said the sapinda (family lineage) should be removed by five degrees from the father's side and by three degrees from the mother's side.

The Supreme Court stated that

- Khap Panchayats should not become conscience keepers as the law will take its own course.
- It was in the jurisdiction of the courts to decide if a marriage was legally valid or not and Khap Panchayats have the no right to intervene.
- Khap are entitled to lodge an FIR or inform the police. They may also facilitate so that the accused is dealt with in accordance with law. But, by putting forth a stand that they are spreading awareness, they really can neither affect others' fundamental rights nor cover up their own illegal acts.

Supreme Court Guidelines to Prevent Honour Killing :

The Supreme Court court laid down following guidelines to stop interference by khap panchayats:

- State governments should identify districts, sub-divisions and/or villages where instances of honour killing or assembly of Khap Panchayats have been reported in the last five years.
- Where the states have knowledge of a proposed khap meet in the above identified areas, the police must try to prevent them and if such meetings are held, must dissuade it from taking any decision causing harm to any couple or their family.
- The police should file an FIR if any such meeting passes any diktat against any couple which does not meet their acceptance, or their families
- It called upon states to consider establishing a safe house at each District Headquarter where couples facing threats can be lodged.
- It asked state governments to create special cells in every District comprising of the SP, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage." These special cells should create a 24-hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.
- It directed that trial in all cases of honour killing be fast-tracked and the cases disposed of in six months from date of taking cognizance.

Why the Court Issued Guidelines ?

Earlier, on January 16, 2018, the court found fault with the Centre for failing to prevent attacks on couples who had entered into inter-caste marriages. Then, the court stated that if the Centre does not act against Khap Panchayats, then the court will step in. However, the Centre did not act on court's suggestion to act against khap panchayats and instead submitted to the court that states must take the responsibility to provide police protection to couples who had entered an inter-caste or inter-gotra marriage.

The Centre also stated that the proposed law against honour killing — The Prohibition of Interference with Freedom of Matrimonial Alliance Bill — is still under circulation among the States. It recommended that till the completion of the legislative process, the State governments should take responsibility for the lives of couples who fear retaliation.

The Prohibition of Interference with Freedom of Matrimonial Alliance Bill 2011:

- The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill 2011

  drafted by the Law Commission of India, is meant to penalise honour killings and uphold the right of adults to marry persons of their own choice without unlawful interference from caste panchayats or persons and relatives intent on harming the couple.
- So far, 23 States have responded to the Bill with suggestions; the other six have not responded yet.
- The Supreme Court has now stepped in to fill this legislative vacuum and framed guidelines.

Conclusion:

Deep rooted social prejudices, feudal structure of society and patriarchal attitudes are the major reasons for 'honour killings'. While these cannot be eradicated overnight through law or judicial diktat, a stern law and order approach is the first step towards curbing groups that seek to enforce such medieval notions of 'honour' through murder or the threat of murder, or ostracisation.

As the supreme court ruled, life choices of individual adults, especially with regard to love and marriage, do not need any sort of interference from society. Such interference violates the liberty and dignity of individuals, and this requires preventive, remedial and punitive measures.

The court has rightly laid down that deciding what is permitted and what is not is the job of civil courts. While these guidelines may have some salutary effect on society, the government should expedite its efforts to bring in a comprehensive law to curb killings in the name of honour and to prohibit interference in the matrimonial choices of individuals.

Question:

What are Khap Panchayats? Offer your comments. *250 Words. 15 Marks.*

Anti-Trafficking Bill Passed by Lok Sabha

What is Trafficking of Persons?

Trafficking of persons means recruitment, transportation and transfer of persons by use of force, deception, coercion or exploitation of vulnerability.

Causes for Trafficking:

Trafficking of persons prevails because of sexual and physical exploitation like forced sex for commercial gains (prostitution) slavery, begging, etc. This is primarily fueled by poverty, illiteracy and lack of livelihood options. Majority of the Trafficking is within the country. However, there are instances where large number of persons are trafficked from neighboring countries and to other countries especially Middle East.

Present Position of Anti Trafficking Mechanism:

- Trafficking in human beings is an organized crime violating basic human rights of the most vulnerable persons in society namely women and children. There is no specific and comprehensive law so far to deal with this crime due to which it became a low risk crime for traffickers while victims had no access to any kind of assistance.
- Section 370 of the Indian Penal Code defines trafficking and penalizes offenders. In addition, Immoral Traffic Prevention Act (ITPA), 1956, deals with cases of sex trafficking, and Bonded Labour System (Abolition) Act, 1976, deals with offences of forced labour. But none, except for certain provisions of the ITPA, provided any relief or rehabilitation to the victims of the offence. This handicaps the criminal justice system's efforts to secure convictions. With no witness/victim protection mechanism and no rehabilitation schemes, prosecutions suffer for lack of evidence.
- Keeping in view of the above deficiencies in the existing legislations and after considering the issues relating to prevention, rescue and rehabilitation of victims of trafficking, the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 has been passed by Lok Sabha in July 2018. The new Bill has been drafted with a victim- centric approach and addresses the issue of trafficking through a multipronged approach focusing on prevention, rescue and rehabilitation.

Major provisions of the Bill:

1. **Confidentiality of Victims/ Witnesses and Complainants:** The bill provides for confidentiality of victims/ witnesses and complainants by not disclosing their identity. Further, the confidentiality of the victims is maintained by recording their statement through video conferencing (this also helps in trans-border and inter-State crimes).
2. **Immediate Protection of Rescued Victims:** Victims will be entitled to interim relief immediately within 30 days to address their physical, mental trauma, etc. and further appropriate relief within 60 days from the date of filing of charge sheet. Central or state governments would set up Protection Homes for this purpose.
3. **Rehabilitation Fund and Rehabilitation Homes:** The Bill provides for Rehabilitation Fund created for the first time by the Central Government and also setting up of Rehabilitation Homes in each district, to provide long-term rehabilitation to the victims. Rehabilitation Fund would be used for the physical, psychological and social well-being of the victim including education, skill development, health care/psychological support, legal aid, safe accommodation, etc.
4. **Designated courts:** Designated courts would be set up in each district for the speedy trial of the cases.
5. **Time Bound Trial:** Time bound trial and repatriation of the victims - within a period of one year from taking into cognizance.
6. **Dedicated Institutional Mechanisms:** The Bill creates dedicated institutional mechanisms (Anti-Trafficking Committees) at District, State and Central Level headed by District Magistrate, Chief Secretary, Secretary, Ministry of Women and Child Development respectively. These will be responsible for prevention, protection, investigation and rehabilitation work related to trafficking. National Investigation Agency (NIA) will perform the tasks of Anti-Trafficking Bureau at the national level present under the Ministry of Home Affairs (MHA).

7. **Punishment:** The Bill laid down a stringent punishment of 10 years to life imprisonment for aggravated forms of trafficking which include trafficking for the purpose of bonded labour, begging, trafficking by administering chemical substance or hormones on a person for the purpose of early sexual maturity, trafficking of a woman or child for the purpose of marriage or under the pretext of marriage, etc.
8. **Forfeiture of property:** Trafficking is an organised crime. In order to break the organised nexus, at the national and international levels, the Bill proposes attachment and forfeiture of property and to remit the proceeds of crime in the rehabilitation fund. It will also freeze bank accounts of those whose funds have been utilised to facilitate trafficking. By doing this, the Bill handicaps the organised trafficking networks.
9. **National Anti-Trafficking Bureau:** Trafficking is a borderless crime and the Bill comprehensively addresses this transnational nature of the crime. The National Anti-Trafficking Bureau will be established. Key functions of the Bureau include:
    a. coordinating and monitoring surveillance along known routes,
    b. facilitating surveillance, enforcement and preventive steps at source, transit and destination points,
    c. maintaining coordination between law enforcement agencies and non-governmental organisations and other stakeholders, and
    d. increasing international cooperation with authorities abroad for intelligence sharing, and mutual legal assistance.

Conclusion: The bill has many progressive provisions intended to address the trafficking problem and if implemented earnestly by the Government and law enforcement authorities, it will greatly contribute to tackling the menace of trafficking in the country and protect the rights of women and children who are vulnerable to exploitation.

Question:

Trafficking in human beings is a major human rights challenge. To what extent, the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 addresses this problem. *150 words 10 Marks.*

Triple Talaq Made Illegal

Issue:

In December 2018, the Lok Sabha passed The Muslim Women (Protection of Rights on Marriage) Bill 2017 that makes instant triple talaq or talaq-e-biddat a punishable criminal offence, with a jail term of upto three years. This law was passed after the Supreme Court set aside the practice of talaq-e-biddat in August 2017 and asked the parliament to make a law in this regard.

What is Triple Talaq ?

Triple Talaq is a religious practice in Islam where pronouncement of the word 'talaq' thrice in one sitting by a Muslim man to his wife results in an instant and irrevocable divorce.

Why is it opposed?

1. **Arbitrary:** It is arbitrary as reconciliation between the husband and wife by arbiters from their families, which is essential to save the marital tie, cannot take place. Marital tie cannot be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation
2. **Against Article 14:** This practice also violates Fundamental Right contained under Article 14 of the Constitution of India (Equality before Law).
3. **Against Gender Justice:** It denies basic dignity of a woman as an individual. It is against gender justice as the wife does not have any say in severing the marital relationship. The rights of a Muslim woman to human dignity, social esteem and self-respect are vital facets of a woman's right to life with dignity, under Article 21 of the Constitution.
4. The conferment of a social status based on patriarchal values, or a social status based on the mercy of the men, is also absolutely incompatible with the letter and spirit of Articles 14 and 15 of the Constitution.

Highlights of Supreme Court Judgement:

1. **Practice Comes under the ambit of Article 13:** The Supreme Court stated that triple talaq in all its three forms - talaq-e-biddat, talaq ahsan and talaq hasan - was "recognised and enforced" under Section 2 of the Shariat Act of 1937. Since the Shariat Act had recognised triple talaq, it was no longer a personal law to remain free of the fetters of the fundamental rights rigour but a statutory law which comes under the ambit of Article 13(1) of the Constitution. Article 13 defines 'law' and says that all laws, framed before or after the Constitution, shall not be violative of the fundamental rights.
2. **Not protected under Article 25:** The practice of talaq-e-biddat allowed a Muslim man to "whimsically and capriciously" divorce his wife. The practice is "manifestly arbitrary" and does not enjoy the protection of Article 25 (Freedom of religious practice). Moreover, instant talaq was merely permissive and not an absolute religious practice, and so, does not deserve the protection of Article 25, again.

Lok Sabha Law on Triple Talaq :

To provide Muslim women dignity and equality, the Lok Sabha passed the 'The Muslim Women (Protection of Rights on Marriage) Bill 2017'. The bill which made the act of pronouncing talaq-e-biddat a punishable offence has the following provisions.

1. **Practice Illegal:** Any pronouncement of talaq by a person upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, is void and illegal.
2. **Non-bailable Offence**: It makes declaration of talaq a cognizable and non-bailable offence. (A cognizable offence is one for which a police officer may arrest an accused person without warrant.)
3. **Three Years Imprisonment:** A husband declaring talaq can be imprisoned for up to three years along with a fine.
4. **Allowance:** A Muslim woman, against whom talaq has been declared, is entitled to seek subsistence allowance from her husband for herself and for her dependent children. The amount of the allowance will be decided by a First Class Magistrate.
5. **Custody of minor children:** A Muslim woman, against whom such talaq has been declared, is entitled to seek custody of her minor children. The determination of custody will be made by the Magistrate.

Opposition :

The bill is opposed on the following grounds.

1. Divorce comes under civil law and cannot be deemed to be a criminal act, punishable by imprisonment.
2. If husband is imprisoned, financial support as provided under the bill cannot be ensured to his wife and children as he will loose opportunity of earning.

Current Status:

The Bill was passed by Lok Sabha in December 2017 (where the Government has a majority in the House)and was sent to Rajya Sabha where it is yet to be passed due to lack of consensus among political parties (the Government does not have majority members in Rajya Sabha and hence requires consensus). In August 2018, the Government introduced following amendments to the bill pending in Rajya Sabha.

1. An FIR will now be cognisable only if the complaint is filed by the victim, the wife, her blood relatives or relatives by marriage. Original Bill allowed anyone to file a complaint.
2. The offence of triple talaq was made 'compoundable' i.e. if the wife and husband want to settle their differences, they can withdraw the case.
3. It allowed a magistrate to grant bail to the accused. Original bill made triple talaq a completely non-bailable offence.

Giving instant triple talaq will continue to be illegal and void and will attract a jail term of three years for the husband.

International Scenario: 19 countries including Pakistan have abolished the practice. The Arab states that have abolished the triple talaq includes Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Sudan, Syria, Tunisia, United Arab Emirates and Yemen along with southeast Asian countries like Indonesia, Malaysia and Philippines. Pakistan, Bangladesh and Sri Lanka also have enacted laws against the muslim divorce practice.

The Muslim Women (Protection of Rights on Marriage) Bill, 2017

Context :

This Bill, which makes instant triple talaq or talaq-e-biddat a punishable offence, is to implement the Supreme Court's 3:2 majority judgment on August 22, 2017 in the case of Shayara Bano vs. Union of India which set aside instant triple talaq stating it as a "mani-festly arbitrary practice" which violates Articles 14 and 15 of Fundamental Rights of Indian Constitution. Honourable Court also stated that triple talaq is not an essential religious practice of Islam.

Provisions of the Triple Talaq Bill :

- Makes Pronouncement of Talaq-e-biddat "Void and Illegal".
- According to clause 3 of the Bill, "Any pronouncement of talaq by a person upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal."
- Offense punishable under this act is cognizable and non-bailable.
- Imprisonment for a term which may extend to three years and fine for the person pronouncing Talaq
- **Maintenance :** a married Muslim woman upon whom talaq is pronounced, shall be entitled to receive from her husband subsistence allowance for her and dependent children
- Custody of minor Children shall be with wife in the event of pronouncement of talaq by her husband.

Positive Aspects of the Bill :

- Making Talaq-e-biddat illegal furthers gender justice and gender equality of married Muslim women and their empowerment by removing a arbitrary and discriminatory practice from Muslim Personal law
- It promotes constitutional goals and preserves the Fundamental Right to Equality of Women
- It is a positive step in the direction of making religious personal laws gender neutral.

Negative Aspects :

- As the offence is cognizable and non-bailable, Police can arrest a man without warrant and hold him without bail even on a false complaint.

- This increases the already disproportionate ratio of Muslims in Jails compared to their usual population percentage
- How can a poor husband jailed for three years pay subsistence allowance to his wife?

Way Forward :

The bill needs amendment as the offence is cognizable and non-bailable which are dispro-portionate to a civil wrong. There is need for more discussion on the implications of vari-ous provisions of the bill.

This Bill has been passed in the Lok Sabha. As there was opposition in the Rajya Sabha, the house was adjourned without passing the Bill.

Amendments Introduced:

In August 2018, the Government introduced following amendments to the bill pending in Rajya Sabha.

4. An FIR will now be cognisable only if the complaint is filed by the victim, the wife, her blood relatives or relatives by marriage. Original Bill allowed anyone to file a complaint.
5. The offence of triple talaq was made 'compoundable' i.e. if the wife and husband want to settle their differences, they can withdraw the case.
6. It allowed a magistrate to grant bail to the accused. Original bill made triple talaq a completely non-bailable offence.

Giving instant triple talaq will continue to be illegal and void and will attract a jail term of three years for the husband.

Question:

What are the major provisions of 'The Muslim Women (Protection of Rights on Marriage) Bill 2017'? Comment. *250 Words. 15 Marks.*

Parliament Passes Bill Providing for Stringent Punishment for Rape Offences

In the backdrop of the widespread national anger against the alleged rape and murder of an eight year old girl in Jammu and Kashmir's Kathua district, the Union Cabinet Chaired by Prime Minister Narendra Modi, on April 21, 2018, gave approval to the promulgation of the Criminal Law (Amendment) Ordinance, 2018 for effective deterrence against the commission of rape. President Ram Nath Kovind issued the ordinance on April 22, 2018. For rape of a girl under 12 years, it provided for death penalty. In August 2018, the Parliament passed the Criminal Law Amendment Bill, 2018 to replace the ordinance (Criminal Law (Amendment) Ordinance, 2018) which was given assent by the President of India.

Details:

The following are the changes made to the present penal provisions against rape under the criminal law including the Indian Penal Code (IPC), Criminal Procedure Code (CrPc), Evidence Act and the Protection of Children from Sexual Offences Act (POCSO Act) 2012.

1. Punishments:

- Minimum punishment in case of rape of women has been **increased** from rigorous imprisonment of 7 years to 10 years, extendable to life imprisonment.
- **Rape offences** have been **classified** on the basis of **age of victim** as well as **whether the crime has been commissioned individually** or **by a gang** (If more than one person is involved in the crime then it is called Gang).
    a. In case of rape of a girl under 16 years, minimum punishment has been increased from 10 years to 20 years, extendable to imprisonment for rest of life, which shall mean imprisonment till that person's natural life.
    b. The punishment for gang rape of a girl under 16 years of age will invariably be imprisonment for rest of life of the convict.
    c. **Stringent punishment for rape of a girl under 12 years** has been provided – minimum 20 years' imprisonment or imprisonment for rest of life or with **death**.
    d. In case of gang rape of a girl below 12 years, punishment will be imprisonment for rest of life or death sentence.

2. Restrictions on Bail:

- There will be no provision for anticipatory bail for a person accused of rape or gang rape of a girl under 16 years.

3. Speedy investigation and trial:

- Time limit for investigation of all cases of rape has been prescribed, which has to be mandatorily completed within 2 months.
- Time limit for completion of trial of all rape cases is 2 months.
- 6 months' time limit for disposal of appeals in rape cases has also been prescribed.

In order to give effect to the legal provisions and to improve the capacity of criminal justice system to deal with rape cases, Cabinet has approved a number of other important measures:

4. Strengthening the courts and prosecution

a. New Fast Track Courts will be set up in consultation with States/UTs and High Courts.
b. New posts of public prosecutors would be created and related infrastructure would be provided in consultation with States/UTs.
c. Special forensic kits for rape cases would be provided to all Police Stations and hospitals.
d. Dedicated manpower will be provided for investigation of rape cases in a time bound manner.
e. Setting up special forensic labs in each State/UT exclusively for rape cases.

5. National Database

National Crime Records Bureau will maintain a national database and profile of sexual offenders.

This data will be regularly shared with States/UTs for tracking, monitoring and investigation, including verification of antecedents by police.

6. Assistance to victims

The present scheme of One Stop Centres for assistance to victim would be extended to all districts in the country.

Analysis of the Bill :

The Bill is being criticised on the following grounds.

Introduction of the death penalty for the rape of children under the age of 12 is likely to put future victims at grave risk. Since the punishment for rape and the punishment for murder are now the same, a rapist may not leave the victim alive, especially since her testimony would be the most important evidence against him.

Timelines for completion of the investigation, for recording of evidence, and for completion of trial are unrealistic too because many a time functionaries in the system (police, prosecutors and judges) find them impractical given their case load and the facilities they have to work with.

Analysts opine that the government needs to invest in combating the rape culture that condones and encourages rape - by age-appropriate sex education at all levels, by aggressive advertisement campaigns to increase awareness and encourage conversations about gender bias, misogyny, stereotypes, consent and equality, and by making concerted efforts to change the way society raises its sons and daughters.

Question:

What are the major provisions of Criminal Law Amendment Bill, 2018? Discuss to what extent these amendments help in checking offences of Rape in our country? *250 Words. 15 Marks*

Problems of LBGT Community

Issue:

Section 377 of the Indian Penal Code criminalises homosexuality with punishment which could be imprisonment for life, or imprisonment up to 10 years, and shall also be liable to fine. The criminalisation of homosexuality was first imposed by the British in 1860, which made sexual activities between members of the same sex against the "order of nature."

LGBTQ (Lesbian, Gay, bisexual, Transgender and Queer) Activists have been demanding scrapping of this section saying that it violates their right to equality, liberty, life, dignity and non-discrimination on the ground of sex. They have also challenged the constitutional validity of Section 377 in Supreme Court contesting that their sexual orientation comes under Right to Privacy which has been declared as fundamental right by the nine judge bench Supreme Court in 2017.

Why Section 377 should be scrapped?

LGBTQ activists have been demanding scrapping of Section 377 of Indian Penal Code on the following grounds.

- Section 377 has a "chilling effect" on the right of equality, liberty, life, dignity and non-discrimination on the ground of sex.
- Right to sexuality, sexual autonomy and freedom to choose a sexual partner form the cornerstone of human dignity.
- Sexual orientation is an essential attribute of privacy and this would be meaningless unless it included the right to choose one's partner.
- One's choice of partner is part of Article 21 (protection of life and personal liberty) and partner would include same sex partner too.
- Homosexuality is not an aberration but a variation and that once Section 377 is decriminalised, the stigma attached to the community would also go.
- Section 377 is misused for harassment by the police machinery.

What are their problems?

- There is social stigma associated with the LGBTQ community.
- Society discriminates LGBTQ community. As a result, they are not able to live with dignity and pursue their professions confidently.
- Because of family and societal pressure Homosexuals do not disclose their sexuality and marry someone of the opposite sex causing frustration.
- Law does not accept the existence of LGBTQ community. Hence, from getting the right identity documents to opening a bank account, the community faces a lot of problems.
- They (LGBTQ) do not get proper medical care because of prejudices against them even in the medical fraternity.

Chronology:

2009:

Delhi High Court struck down the provision of Section 377 of the Indian Penal Code which criminalised consensual sexual acts of adults in private, holding that it violated the fundamental right of life and liberty and the right to equality as guaranteed in the Constitution. Following this, religious groups moved the Supreme Court for a direction against the verdict.

(The verdict came on a PIL plea by Delhi-based non-government organisation Naz Foundation that the Section 377 provision criminalising sexual acts between consenting adults in private violated Articles 14, 15, 19 and 21 of the Constitution. The Foundation works among sex workers in Delhi.)

2013:

The Supreme Court in 2013 overruled the Delhi High Court's order and reinforced criminalisation of homosexuality stating that it was Parliament's job to scrap laws. Thus it upheld the criminalisation of gay sex while virtually denying the LGBT community the right to sexuality, sexual orientation and choice of partner

2017:

In August 2017, the fight against Section 377 got a second major boost when a nine-judge Bench of the court, led by the then Chief Justice of India J.S. Khehar, upheld the right to privacy as a fundamental right intrinsic to life and liberty. The judgement also underlined the impact of Section 377, saying that it poses a grave danger to the unhindered fulfilment of one's sexual orientation, as an element of privacy and dignity.

The judgment stated that equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the **protection of sexual orientation lie at the core of the fundamental rights guaranteed** by **Articles 14, 15 and 21 of the Constitution.** Article 14 guarantees equality before the law, Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth, and Article 21 guarantees protection of life and personal liberty.

2018:

In January 2018, the Supreme Court said a larger group of judges would re-consider the previous judgment and examine Section 377's constitutional validity. A Constitution Bench, led by Chief Justice Dipak Misra, re-opened the entire issue, saying a section of people could not live in fear of the law which atrophied their rights to choice, privacy and dignity.

What is the stand of Government?

The Central Government stated that it would not take a stand on the validity of Section 377 and left it to the 'wisdom of the Supreme Court'.

Who are LGBT Community?

Benefits of Scrapping Section 377?

Once the Constitution Bench decides that homosexuality is also an order of nature and upholds the fundamental right to sexuality, sexual orientation and choice of same-sex partners, the doors would be opened for individuals to approach the court in future on the larger issues **of legalising same-sex marriages, inheritance, adoption, and reservation in employment.**

Question:

Criminalization of homosexuality deprives the LGBTQ community of Fundamental Rights guaranteed under the constitution. Examine. *250 Words. 15 Marks*

(or)

Criminalization of homosexuality has led to social deprivation of LGBTQ community. Elaborate. 150 Words 10 Marks.

Begging Decriminalized in Delhi

Issue :

In August 2018, the Delhi High Court struck down the legal provisions criminalising begging in the capital except those parts which criminalise "forced" begging. It declared 25 sections of the Bombay Prevention of Begging Act, 1959 which have been extended to Delhi by a notification by the Centre, as "unconstitutional" as they violate Article 14 and Article 21 of the Constitution.

At the moment, there is no central law on begging. Begging is criminalised by most states by either adopting or modelling their laws on the Bombay Prevention of Begging Act, 1959.

The law prescribes a penalty of three years of detention in beggar homes in case of first conviction for begging and the person can be ordered to be detained for 10 years in subsequent conviction.

Major Provisions of the Bombay Prevention of Begging Act, 1959:

- **Definition of Begging:** Begging has been defined as 'soliciting or receiving alms, in a public place whether or not under any pretence such as singing, dancing, fortune telling, performing or offering any article for sale'.
- It criminalises begging and gives the police the power to arrest beggars without a warrant.
- It gives magistrates the power to commit them to a "certified institution" (a detention centre) for upto three years on the commission of the first "offence", and up to 10 years upon the second "offence".
- The Act also authorises the detention of people "dependant" upon the "beggar" (family), and the separation of children over the age of five.
- Certified institutions have control over detainees, including the power of punishment, and the power to exact "manual work". Disobeying the rules of the institution can land an individual in jail.

Why the Court Struck Down Criminalising Provisions:

- Begging is the last resort of the poor. Criminalising begging makes way for the police, policy makers and others to push the most marginalised out of public spaces and turn a blind eye to the real reasons behind people turning to begging. But, poverty cannot be a crime.
- Treating begging as crime does not tackle its root causes.
- Root cause of begging is poverty that has many structural reasons behind it—illiteracy, absence of social protection, physical and mental disabilities.
- The government has the mandate to provide social security for everyone, to ensure that all citizens have basic facilities such as food, shelter and health, and the presence of beggars is evidence that the state has not managed to provide these to all its citizens".
- People resorting to begging do not have access to basic necessities and in addition, criminalising them denies them the basic fundamental right to communicate and seek to deal with their plight.

Forced Begging to Remain an Offence:

The court has not struck down provisions that do not treat beggary per se as an offence, including Section 11, which deals with penalty for employing or causing persons to beg. This addresses forced begging or "begging rackets", which are used to justify retaining the Act. Activists advocating repeal of the Act, however, say that these can be dealt with existing provisions in the Indian Penal Code.

Consequences of Decriminalisation:

- Incidents of begging and people resorting to this practice may increase in the capital city in the absence of any penal provisions.
- Decriminalisation may also abet criminal gangs to push more people into begging and create law and order problem for police.

Topic : Poverty Issues (General Studies Paper 1)

Question :

Poverty is the root cause of begging. Hence, begging should be decriminalised. Comment. 150 words. 10 Marks.

Law Commission Recommends Legalisation of Gambling and Betting in Sports

In July 2018, the Law Commission of India, in its 276th report (which examined the need for legalizing betting in India on the recommendation of the supreme court), recommended legalization and regulation of betting and gambling in sports as complete ban has not been ensuring the desired results.

- It recommended that Parliament may enact a model law for regulating gambling that may be adopted by the States. It also suggested following alternatives.
- Parliament may legislate in exercise of its powers under Articles 249 or 252 of the Constitution. (**Article 249:** It deals with power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State. **Articles 252:** It deals with power of Parliament to legislate with respect to a matter in the State List in the national interest.)
- Gambling and betting being a State subject under List II of the Seventh Schedule of the Constitution, State Legislatures are competent to enact the required Law.

Scope of work expanded to include gambling:

Though the issue of legalizing gambling was not referred to the Law Commission by the Supreme Court, the Commission decided to study it, because, in the opinion of the Commission, betting and gambling are two sides of the same coin. It opined that betting is a more sophisticated 'word-substitute' coined for the activity of gambling, since gambling *per se* carries with it a social stigma. It relied on the Oxford dictionary which defines the term 'betting' as "the action of gambling money on the outcome of a race, game, or other unpredictable event". Moreover, there is proliferation of illegal activities and commerce in gambling. Hence, the commission decided to study and make recommendations both on betting and gambling.

Defining Betting and Gambling:

Though betting and gambling are seen as synonymous, there is difference between them. An important distinction between betting and gambling is that in gambling, the stakes is placed on an event without any clue of the outcome; whereas, in betting the stakes are placed on an event, the outcome of which is based on the performance of the players, influenced by their skill.

Why Gambling and Betting should be legalized?

1. A total ban on gambling and betting activities would not completely eradicate the problem. Rather, it would drive it straight to the black-market. This in turn would result in making it harder to monitor such illegal activities.
2. It would further result in crime syndicates profiting from unregulated gambling activities creating a vicious circle of proliferation of illegal activities and commerce.
3. Illegal betting causes substantial monetary loss to the Government, with profits escaping the purview of taxation, and also increases the circulation of black money in the market.
4. Regulation would bring revenue for the Government and also generate employment.
5. Regulation would ensure transparency in the market and also strike at the underworld's control over the illegal and unregulated gambling industry.
6. Revenue generated by regulating and taxing betting and gambling, may become a good source of revenue which could be used for public welfare.
7. Regulation would also enable the Government to effectively curb the menace of black-money generation through illegal gambling.
8. Many countries that prohibit gambling have not been successful, particularly with regard to online gambling. On the other hand, countries like Japan, U.K, and China are earning huge revenues by legalizing betting and gambling.

Why Some People Indulge in Betting and Gambling?

Betting and Gambling are discouraged from a moral and religious perspective. Yet, they have always been a part of human civilization because of its perennial allurement. Gambling is perhaps as old as mankind and has

been globally practised in different forms such as gaming, betting, races, etc. People indulge in these activities for following reasons.

1. It gives chance to win huge money with small investments.
2. It is seen as ubiquitous pastime.
3. It is practised as source of entertainment by the rich.

Adverse Effects of Gambling and Betting:

1. This activity involves a lot of risk as the results of the betted event are uncertain.
2. These activities destroy values like truth and honesty in people apart from wealth. Thus these are means of self-destruction.
3. It has disastrous consequences for the families of gamblers who belong to vulnerable class of the society.

Recommendations for Regulation:

The Law Commission made following recommendations for regulating betting and gambling.

1. Licensing of Operators:

Gambling and betting should be offered only by Indian licensed operators from India possessing valid licences granted by the game licensing authority.

2. Restrictions on Participants:

For participants, there must be a cap on the number of transactions an individual can indulge in these activities in a specific period, i.e., monthly, half-yearly or yearly. The nature of stakes should be restricted to money with a linkage to PAN card and Aadhaar card, and the betting amount should be prescribed by law, having an upper limit on the amount one can legally stake in a gamble, which may be on the basis of the deposit, winnings or losses.

Similar restrictions should also be prescribed for the purpose of the amount one would be allowed to stake while using electronic money facilities of the likes of credit cards, debit cards, net-banking, VCs, etc.

3. Classification of Gambling:

Gambling must be classified into two categories, namely **'proper gambling'** and **'small gambling'.**

'Proper gambling' would be characterised by higher stakes. Accordingly, only individuals belonging to the higher income group shall be permitted to indulge in this form of gambling. On the other hand, individuals belonging to the lower income groups will have to confine themselves to 'small gambling', not being permitted to stake high amounts (falling within the bracket of 'proper gambling').

4. Safeguards:

In order to protect the public from the ill-effects of these activities and with a view to have enhanced transparency and state supervision, all betting and gambling transactions should be linked to the operator's as well as the participant's/player's Aadhaar Card/PAN Card.

Information regarding the risks involved in gambling/betting and how to play responsibly must be displayed prominently on all gambling and betting portals/platforms

The transactions made between and among operators and players/participants indulging in these activities should mandatorily be made 'cashless'. This would go a long way in enabling appropriate authorities to keep a close eye on every single transaction so made. Necessary provisions should be made part of the relevant law(s), attracting penal consequences for cash transactions so made.

5. Taxing of Gains Made under Gambling and Betting:

Any income derived from gambling and betting activities should be made taxable under the Income Tax Act, 1961, the Goods and Services Tax Act, 2017 and all other relevant laws for the time being in force applicable to such activities in India.

6. Allowing FDI:

The Foreign Exchange Management Act, 1999 and the Rules made there under as also the Foreign Direct Investment (FDI) Policy, may suitably be amended to encourage Foreign Direct Investment in the casino/online gaming industry, lawfully permitting technological collaborations, licensing, brand sharing agreements, etc. Allowing FDI in this industry would bring substantial amounts of investment to those

States that decide to permit casinos, propelling the growth of the tourism and hospitality industries, while also enabling such States to generate higher revenue and employment opportunities.

International Scenario:

Countries across the globe have adopted three approaches in the matter of regulating gambling and betting activities.

Some Countries, especially those which give primacy to religious morality, have taken the view that the role of government is to protect its citizens from the negative effects of such activities. Countries that give primacy to religious morality often impose a complete ban on gambling, while others view gambling and betting as an industry to encourage tourism, employment and revenue.

Some countries also operate between these two extremes, striking a balance and permit gambling in a controlled and regulated environment; as a result, they earn substantial revenue from the tax imposed on such activities. This revenue can be utilised for promoting sports, cultural, charitable activities or any other activity aimed at the economic growth or development. For instance, Britain's Gambling Industry is one of the largest in the world and continues to increase in size. It generated £13.8 billion between October 2015 and September 2016 for the government.

Question:

Legalisation and regulation of gambling and betting would not only bring revenues to the government but also address the problem of illegal activities proliferating because of gambling and betting. Examine. *250 words (15 Marks)*

Supreme Court's Observations and Guidelines on Lynching

Condemning the rising incidents of lynching in India, on July 16, 2018, the Supreme Court urged the Parliament to pass a new law classifying lynching as a separate offence with punishment. The court noted that this is essential to protect citizens and ensure that the "pluralistic social fabric" of the country holds against mob violence.

What is Lynching?

Lynching means killing a person or persons by mobs on suspicion of an offence.

Causes:

In our country lynching is occurring because of two major reasons: Cow Vigilantes and rumours about child lifters.

- Cow vigilantes (self-proclaimed "cow protectors") are killing cattle traders on the suspicion of smuggling cattle for consumption. Rajasthan, Madhya Pradesh, Jharkhand and Uttar Pradesh have reported incidents of cow vigilantism over the last three years. Mohammad Akhlaq was killed in Dadri, Uttar Pradesh, on September 28, 2015 by angry villagers following a rumour that his family was in possession of cow meat. In July 2018, Rakbar was killed in Alwar in Rajastan on suspicion of taking cows to slaughter house. These highlight the seriousness of mob attacks in the name of cow protection.
- Five persons were lynched in Dhule district of Maharashtra on suspicion that they were "child lifters". Incidents of mob violence were also reported in Karnataka, Tamilnadu, West Bengal and Tripura.

  Causes: Fake videos and malicious rumours on social media are also leading to lynching by mobs. Rumours circulated on 'WhatsApp' about child kidnappers led to killing of innocents by mobs.

Supreme Court's Observations:

- The Supreme Court observed mob violence as 'horrendous acts of mobocracy' and stated that rising intolerance and growing polarisation expressed through spate of incidents of mob violence cannot be permitted to become the normal way of life or the normal state of law and order in the country.
- Observing that pluralism and tolerance are essential virtues and constitute the building blocks of a truly - free and democratic society, the Supreme Court stated that lynching by unruly mobs and barbaric violence arising out of incitement and instigation cannot be allowed. It undermines the legal and formal institutions of the State and if these are not "nipped in the bud it would lead to rise of anarchy and lawlessness in society.
- The Court noted that there cannot be a right higher than the right to live with dignity and further to be treated with humanness that the law provides. What the law provides may be taken away by lawful means; that is the fundamental concept of law. No one is entitled to shake the said foundation. No citizen can assault the human dignity of another, the court noted.
- Lynching is an affront to the rule of law and to the exalted values of the Constitution itself. Lynching by unruly mobs and barbaric violence arising out of incitement and instigation cannot be allowed to become the order of the day.
- Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated.
- Extra judicial elements and non-state actors cannot be allowed to take the place of law. These extrajudicial attempts under the guise of protection of the law have to be nipped in the bud.
- It stated that it was also the obligation of the Centre and the States to ensure that "nobody takes the law into his hands nor become a law into himself",

Supreme Court's Guidelines:

The Supreme Court issued following guidelines to tackle the problem of mob violence.

1. The court directed state governments to designate a senior police officer, not below the rank of Superintendent of Police, as nodal officer in each district to take steps to prevent mob violence and lynching. He has to be assisted by a DSP. The two officers will in turn constitute a special task force to collect intelligence on those likely to commit such crimes or be involved in spreading hate speeches, provocative statements and fake news.

2. The court asked the Union Home Ministry to take the initiative and work in co-ordination with state governments to sensitise law enforcement agencies in identifying measures for prevention of mob violence and lynching.
3. The Central Government as well as the State Governments shall take steps to curb the spread of irresponsible and explosive messages, videos and other material on various social media platforms which have a tendency to incite mob violence and lynching of any kind.
4. Cases of lynching and mob violence shall be specifically tried by fast track courts. There should be day to day basis hearings and it should be "preferably concluded within six months.
5. To deter others from indulging in mob violence and lynching, the trial court must ordinarily award maximum sentence upon conviction of the accused person.
6. State governments shall prepare a compensation scheme for lynching/mob violence victims.

Question:

What are the reasons for increasing incidents of lynching in our country? Suggest some measures to check this menace. *150 Words. 10 Marks*

Menace of Fake News

Fake news circulated through online media is leading to problems like lynching.

What is Fake news?

While misinformation spread through social media has been spreading fast, fake news itself is an amorphous category. It includes misleading news, unverified content, hoaxes, and even fabricated pictures. However, in simple terms, fake news means disseminating false information by using media like WhatsApp, Facebook, etc

Instances of Fake news:

- A number of mob lynching and assault cases were also reported from different states across the country recently weeks after fake news pertaining to child kidnappers started to circulate on WhatsApp groups
- A WhatsApp message saying RBI has cancelled Axis Bank's licence went so viral in December 2017 that it led to people withdrawing their money from their Axis Bank account and eventually leading to RBI making a rare statement calling it out a fake news.
- The story about surveillance chips in the new Rs 2,000 notes went viral when the note was launched in November 2016.

Factors Facilitating Fake News:

The proliferation of technology, cheap smartphones, and reasonable data rates have enabled the democratization of online content. However, this ecosystem is being used for spreading of unverified information.

Why Regulation is Needed?

Regulation is needed to check lynching, communal riots, etc. Hence, both print and electronic media are regulated but online media does not come under the ambit of regulatory mechanism. The items telecast on television channels are regulated in terms of the programme and advertisement codes under the Cable Television Networks Rules, 1994. Similarly, autonomous Press Council of India regulates the print media.

Problems in Regulation of Fake News:

Regulation of Fake news is difficult because of following reasons.

- Pre-censorship of news and information is virtually impossible due to the speed of content creation.
- Pre-censorship will also violate the guarantee of free speech under Article 19(1)(a) of the Constitution.
- Any screening in the context of social media applications such as WhatsApp could also violate the fundamental right to privacy recognized by the Supreme Court.
- Furthermore, technologies like end-to-end encryption in messaging apps which are intended to ensure surety and privacy would pose a significant challenge to pre-censorship efforts.

What has been done to tackle this menace?

To regulate fake news in online media, the Government of India, in April 2018, instituted a committee to suggest measures for regulation of online portals, including news websites, entertainment sites and media aggregators. The 10-member committee will include secretaries of the departments of Home, Legal Affairs, Electronics and Information and Technology, and Industrial Policy and Promotion. The CEO of MyGov and a representative each of the Press Council of India and National Broadcasters' Association will also be part of the committee.

The committee will

- delineate the sphere of online information dissemination which needs to be brought under regulation, on the lines applicable to print and electronic media, and
- recommend "appropriate policy formulation" for online media/ news portal and online content platforms.

Supreme Court's Guidelines:

The Supreme Court issued following guidelines to tackle the problem of mob violence.

7. The court directed state governments to designate a senior police officer, not below the rank of Superintendent of Police, as nodal officer in each district to take steps to prevent mob violence and lynching. He has to be assisted by a DSP. The two officers will in turn constitute a special task force to

collect intelligence on those likely to commit such crimes or be involved in spreading hate speeches, provocative statements and fake news.

8. The Central Government as well as the State Governments shall take steps to curb the spread of irresponsible and explosive messages, videos and other material on various social media platforms which have a tendency to incite mob violence and lynching of any kind.

What Can Be Done?

- There is a need to develop critical thinking among users. Efforts should be made to encourage individuals to learn the skills required to navigate the internet and question the content they are exposed to. Users should understand the limitations of digital media.
- Nurturing a general culture of scepticism among citizens towards information is also essential. Good practices such as verifying the source of the news and corroboration with related news, ought to be taught in schools and through public education campaigns.
- Legal interventions should address problems posed by threat to life or national security because of fake news.

Question :

Fake news has emerged as a menace and there is an urgent need for its regulation. Discuss 250 words. 15 Marks

Pradhan Mantri Jan Arogya Abhiyaan (Ayushman Bharat)

What is Pradhan Mantri Jan Arogya Abhiyaan (Ayushman Bharat)?

The Central government will launch the Pradhan Mantri Jan Arogya Abhiyaan (part of Ayushman Bharat-National Health Protection Mission) on September 25, 2018 on the birth anniversary of Pandit Deendayal Upadhyay. It is a cashless health insurance scheme for poor and vulnerable families. It benefits 10 crore deprived rural families and identified occupational category of urban workers' families (8.03 crore in rural and 2.33 crore in urban areas).

Why Ayushman Bharat?

- Health care insurance coverage in the country is very low amongst both rural and urban population.
- As a result, out of pocket (OOP) expenditure in India is over 60%. This means over 60 % population have to spend their income or savings to meet healthcare costs.
- Sometimes people borrow money or sell their assets. This deprives them of their assets or pushes them into debt trap.

Advantages:

- **It is move towards universal access to good quality health care services.**
- It reduces the financial burden on poor and vulnerable groups and ensures that the poor of India get access to good quality and affordable healthcare.
- This scheme will help India progressively achieve Universal Health Coverage (UHC) and Sustainable Development Goals (SDG).
- It will promote increased investments in healthcare sector and generate jobs, especially for women.

Who are the Beneficiaries?

Initially the scheme would cover **10 crore families** (approximately 50 crore beneficiaries) belonging to poor and vulnerable population who would be selected based on Socio Economic and Caste Census (SECC) database. This would cover 40 % of total population. This means that nearly all the poor and vulnerable families will be covered.

What are the Benefits?

- The scheme would provide cashless insurance cover of **Rs. 5 lakh** per family per year. The beneficiaries can avail from any public/private empanelled hospitals across the country.
- This scheme will cover secondary care and tertiary care procedures (excepting a small negative list). 1,350 medical packages covering surgery, medical and day care treatments would be covered.
- There will be no cap on family size and age in the scheme. This is to ensure that nobody is left out (especially women, children and elderly). (Insurance policies generally exclude elders and pre existing diseases.)
- All pre-existing conditions will be covered from day one of the policy.
- The benefit cover will also include pre and post-hospitalisation expenses.
- A defined transport allowance per hospitalization will also be paid to the beneficiary.
- Benefits of the scheme are portable across the country and a beneficiary covered under the scheme will be allowed to take cashless benefits from any public/private empanelled hospitals across the country.

Implementation Method:

- States will be free to choose the modalities for implementation. They can implement through insurance company or directly through Trust/ Society or a mixed model.
- To control costs, the payments for treatment will be done on package rate (to be defined by the Government in advance) basis. The package rates will include all the costs associated with treatment.

- For beneficiaries, it will be a cashless and paper less transaction.
- Keeping in view the State specific requirements, States/ UTs will have the flexibility to modify these rates within a limited bandwidth.
- **Co-operative federalism and flexibility to states**: Some state Governments are already implementing health insurance schemes. Hence, there is provision wherein Centre can partner with the States through co-alliance. This will ensure appropriate integration with the existing health insurance/ protection schemes of various Central Ministries/Departments and State Governments (at their own cost). The states are also free to continue with their own health programmes.
- The expenditure as premium payment will be shared by the Central and state governments in a specified ratio – 60:40 for all states and UTs with their own legislature, 90:10 in Northeast states and the three Himalayan states of Jammu and Kashmir, Himachal and Uttarakhand. All the UTs without a legislature will get 100% central funding.

Checking Misuse:

- A robust, and interoperable IT platform will be made operational in partnership with NITI Aayog , which will entail a paperless, cashless transaction. This will also help in prevention / detection of any potential misuse / fraud / abuse cases. This will be backed by a well-defined Grievance Redressal Mechanism.
- In addition, pre-authorisation of treatments with moral hazards (Potential of misuse) will be made mandatory.

Expenditure:

The total expenditure will depend on actual market determined premium paid in States/ UTs where AB-NHPM will be implemented through insurance companies. Approximate expenditure is Rs20, 000 to 30,000 crore per annum.

Criticism:

- Public healthcare infrastructure in secondary and tertiary care is not strong in India. There is shortage of infrastructure and human resources. Hence, patients would be forced to visit private hospitals. Thus this scheme is likely to benefit private parties more than government hospitals.
- Private hospitals may undertake unnecessary procedures on the poor to cash in the insurance benefits. This would not only have adverse effect on the people but also leads to misuse of public money.
- Relying on commercial healthcare insurance model may be unsustainable for India. Among major developed countries only USA has commercial insurance model. In UK healthcare is government funded. Hence this scheme might serve the interests of corporate health-care providers and health insurance companies.

Question:

Pradhan Mantri Jan Arogya Abhiyaan (Ayushman Bharat) is a path breaking initiative towards universalisation of secondary and tertiary healthcare? But it is important to develop sustainable models of delivery to prevent its misuse by private sector. Discuss 250 Words. 15 Marks.

Supreme Court Allows Passive Euthanasia

Upholding the right to die with dignity, the Supreme Court, on March 9, 2018, gave **legal sanction to passive euthanasia** and **execution of a living will of persons** suffering from chronic terminal diseases and likely to go into a permanent vegetative state. However, the Supreme Court held that active euthanasia is unlawful.

What is Passive euthanasia ?

Passive euthanasia entails a patient being allowed to die by limiting medical intervention, withholding or withdrawing artificial life support in cases that are judged to be medically futile.

Why the Supreme Court Allowed Passive euthanasia ?

- The Supreme Court a**ccorded primacy to the constitutional values of liberty, dignity, autonomy and privacy.** It stated that fundamental right to a "meaningful existence" includes a person's choice to die without suffering,
- It stated that the right of an individual to refuse medical treatment is unconditional. Neither the law nor the constitution can compel an individual who is competent and able to take decisions to disclose reasons for refusing medical treatment nor is such a refusal subject to the supervisory control of an outside entity.

The Supreme Court also stated that

- modern medical science should balance its quest to prolong life with need to provide patients quality of life. One is meaningless without the other.
- the issue of death and when to die transcended the boundaries of law, but the court had intervened because it also concerned the liberty and autonomy of the individual.
- though religion, morality, philosophy, law and society shared equally strong and conflicting opinions about whether right to life included right to death, a person has fundamental right to die with dignity.

Brief Background :

The Supreme court ruling was pronounced on a 2005 plea filed by Prashant Bhushan on behalf of NGO Common Cause that sought recognition of a living will so that an individual could exercise the right to refuse medical treatment at a terminally-ill stage of life.

Procedural Guidelines Issued :

The Supreme Court also laid down procedural guidelines governing the advance directive of a living will. The guidelines will operate till a legislation is put in place.

What is Living Will ?

- A living will is a document prepared by a person in their healthy/sound state of mind under which they can specify in advance whether or not they would like to opt for artificial life support, if he/she is in a vegetative state due to an irreversible terminal illness in the future.
- Such advance directive must be in writing and indicate in clear terms the decision relating to circumstances in which withholding or withdrawal of medical treatment could be resorted to.
- The document would bear signatures of the executor in the presence of two attesting witnesses, and the jurisdictional judicial magistrate of first class (JMFC). In case a person has two living wills, the one most recently signed would prevail.

Setting up of Medical Board :

- In the event of the executor becoming terminally ill with no hope of recovery, the physician treating the patient after informing the executor/his guardian about the nature of illness and consequences of alternative forms of treatment will set up a hospital medical board.
- The hospital medical board would consist of the head of the treating department and at least three experts from the fields of general medicine, cardiology, neurology, nephrology, psychiatry or oncology with at least twenty years of experience in the medical profession. Their decision would serve as preliminary opinion on whether or not to certify carrying out the instructions in the living will.

- If the hospital medical board opines on executing the advance directive, another medical board will be set up, which may endorse the its execution if it concurs with the initial decision of the medical board of the hospital. This decision would then be conveyed to the jurisdictional judicial magistrate of first class (JMFC) who after visiting the patient and examining all aspects would authorise its implementation.
- If the medical board refuses to allow withdrawal of medical treatment, it may be challenged by the executor or his family members before the concerned high court.

Centre's Stand on the Issue :

- While the centre supported allowing passive euthanasia, it opposed the concept of living will.
- It submitted to the court that consent for removal of artificial support may not be an informed one and could be misused in cases of the elderly.
- It stated that the government had already accepted the apex court's ruling in the landmark Aruna Shanbaug case on 11 March 2011, which held that a specific category of relatives could seek permission from the court to opt for passive euthanasia on behalf of the person in cases of a terminally ill patient.

241st report of the Law Commission Recommendation :

- The 241st report of the Law Commission states that passive euthanasia should be allowed with certain safeguards.

Question:

Should Right to life under Article 19 of the Constitution include Right to die with dignity? Discuss in the context of Supreme Court verdict legalizing passive euthanasia. *250 Words. 15 Marks.*

'No detention' Policy in Primary Education Abolished

In July 2018, Lok Sabha approved an amendment to the Right to Education (RTE) Act to remove the "no detention" policy, which ensured that no student could be held back (or failed) in a class until the end of elementary education (that is Standard 8th). The latest amendment was a significant change since the no detention policy was one of the fundamental pillars of the RTE Act. The Bill provides for a regular examination in classes 5 and 8 and if the child fails, he/she would be given an opportunity to attempt the exam in two months time. However, it has been left to the discretion of states whether to implement the detention policy or not.

Why No Detention policy was introduced?

The no detention policy was introduced to curb the sharp dropout rates as students were dropping out of school because of demotivation when they fail. Moreover, failure of a student could also be for reasons beyond his control like teacher absenteeism.

Why Detention policy is being Re-introduced?

No detention policy led to decline in dropout rates but it led to falling standards of education. This reflected in The Annual State of Education Report (ASER) surveys conducted by institutions such as the Pratham Education Foundation. Though enrolment was high, at over 96 per cent, student learning outcomes were not satisfactory.

ASER 2017 report showed, that the lack of education attainment meant that students in the age group of 14 to 18 struggled with foundational skills such as reading a text in their own language or solving a simple arithmetic division. This poor understanding among students, in turn, led to a sharp rise in dropout rates in classes IX and X. Thus, in the absence of detention, students had no real motivation to learn anything, and teachers had no accountability.

What is expected with Detention Policy?

Detention Policy is expected to

- ensure a check on students performance and improve learning outcomes.
- deter students from taking their studies casually, and
- increase the accountability of teachers.

Other Issues to be addressed:

Primary education in our country still faces long-standing limitations: poor teaching standards, inadequate infrastructure facilities, lack of monitoring mechanisms, skewed pupil-teacher ratio, etc. Unless these aspects are addressed, merely holding exams at the end of the year and detaining ill-prepared students may serve only a limited purpose.

Criticism against Amendment:

Social Activists and Educationists have criticized the amendment which facilitates detention on the following grounds.

- Scrapping the 'No Detention Policy' will undermine one of the key provisions of Right to Free and Compulsory Education Act which mandates admitting children in age-appropriate classes. (Section 4 of the Act says "Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age.')
- Making children repeat classes could force the most marginalized and economically deprived among them to drop out.
- The Right to Education Act emphasizes comprehensive, continuous evaluation (Section 29) which will now be abandoned in practice as schools reorient themselves to ready children for tests.
- Holding of regular exams at the end of 5^{th} and 8^{th} class also contradicts Section 30 of the Right to Education Act which explicitly states that "no child shall be required to pass any Board examination till completion of elementary education".

Question:

Abolition of 'No Detention Policy' in primary education is against the spirit of Right to Education (RTE) Act. Examine. *150 Words. 10 Marks*