

**POLITY AND GOVERNANCE****CRISIS IN INDIA'S CRIMINAL JUSTICE SYSTEM**

**CONTEXT:** Recently, a division bench of the Supreme Court of India in *Satender Kumar Antil vs CBI* laid down fresh guidelines on arrests in order to have strict compliance with the provisions of Section 41 and 41A of the Code of Criminal Procedure, 1973.

**What are Sections 41 and 41A of the Code of Criminal Procedure?**

- Section 41 of the Code provides for the circumstances in which arrest can be made by the police without a warrant and mandates for reasons to be recorded in writing for every arrest and non-arrest.
- Section 41A of the Code provides for the requirement of a notice to be sent by the investigating agencies before making an arrest in certain conditions prescribed by the Code.

**How is a person arrested?**

- Arrest in its simplest form is defined as, “when one is taken and restrained from his liberty”.
- The police have wide powers to arrest under the Code of Criminal Procedure, 1973.

**Scale of the crisis in India's criminal justice system.**

- Over 75% of India's prison population are undertrials while overcrowding in Indian prisons stands at 118%.
  - These stark realities are often cited to represent the scale of the crisis in India's criminal justice system.
- **Challenges in bail compliance**
  - A large number of undertrials continue to remain in prison despite being granted bail due to challenges in complying with bail conditions.
    - Lack of means to arrange for money/property and local sureties are the most significant reasons accounting for an undertrial's inability to comply with bail conditions, realities borne out by our experience in the FTP.
- **Flawed assumptions**
  - The bail system, as it currently operates, has flawed assumptions that every arrested person will be propertied or have access to propertied social connections.
    - It presumes that the risk of financial loss is necessary to ensure the presence of the accused in court.
- **Disposal of pending cases**
  - There are more than 4.4 crore cases pending before the judiciary. It is unlikely that this problem will go away any time soon.
- **Accessibility**
  - Justice mechanisms will remain inaccessible to marginalised classes of citizens.
- **Abuse of power**
  - Another problem is abuse of power by the police.
    - The colonial mindset with which the institution was created is persistent.
    - It determines and governs the manner in which the police discharge their functions. Our stress on crime control values too promotes such abuse of power.
- There is a dearth of reliable state-sponsored data collection, maintenance and analysis mechanisms.

**Observations of Supreme Court**

- The Supreme Court of India recently acknowledged, in *Satender Kumar Antil vs CBI*, the ineffectiveness of India's bail system and its contribution to this crisis.
  - The Court said that the investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A and the directions issued in the *Arnesh Kumar* case.
  - The Court stated that any dereliction on the part of the agencies has to be brought to the notice of the higher authorities by the court followed by appropriate action.
  - The Court provided comprehensive guidelines on laws related to bail, such as mandating timelines for the disposal of bail applications and laying emphasis on the need to enact a separate legislation.
- In the case of *Arnesh Kumar*, the apex Court had rightly observed that “arrest brings humiliation, curtails freedom and casts scars forever”.

- In the Joginder Kumar (1994) verdict, the Court had stated that “arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person”.

### Other Efforts

- In its 146 th report, the Parliamentary Standing Committee on Home Affairs had recommended that there was a need for a comprehensive review of the criminal justice system of the country.
- The Court said that “there needs to be a strict compliance of the mandate laid down in the judgement of this court in Siddharth” ( Siddharth vs State of U.P., 2021).
- In 2003, the Justice V.S. The Malimath Committee on reforms in the criminal justice system had come up with some far-reaching suggestions, some of which became part of changes in criminal law.
- The Justice Verma panel came up with a comprehensive and progressive report on reforms needed in laws concerning crimes against women in 2013 in barely one month, but its speed was probably due to the limited mandate it had.

### Conclusion and Way Forward

- **Understanding nature of Problem**
  - Any reimagination of the law on bail needs to first understand the exact nature of the problem that results in large-scale undertrial incarceration. This assessment needs to be based on multiple parameters .
- **Effective bail law**
  - An effective bail law must be based on the correlation with variables such as the demographics of undertrials, category of offences and timelines for bail, and also address socio-economic and structural barriers.
  - There is an urgent need for bail reform but it would be counterproductive to undertake a reform exercise without first developing the empirical basis to understand and diagnose the problem at hand.
- **Uniform curriculum**
  - We need to strive for a uniform curriculum of the highest standard across police academies. The Central Government had initiated the process to set up a Central Police University (CPU) in Noida.
- **provide an advocate**
  - The State should provide an advocate of the victim's choice to plead on his/her behalf and the cost has to be borne by the State if the victim can't afford it.
- **Clear guidelines**
  - The National Judicial Commission must have clear guidelines on precise qualifications, experience, qualities and attributes that are needed in a good judge and also the prescription of objective criteria to apply to the overall background of the candidate.
- **Separate criminal division**
  - The higher courts, including the Supreme Court, should have a separate criminal division consisting of judges who have specialised in criminal law
- **Filling post**
  - Reducing the pendency of cases by filling sanctioned judicial positions is also the need of the hour .
- **Comprehensive steps**
  - The criminal justice system is an integral part of the democratic setup. Therefore, it is imperative that comprehensive steps are taken to make the system more effective.
  - Therefore, It is an imperative to evolve an effective jurisprudence of “complete justice” by focusing on personal liberty.

## **PRELIMS**

### **1. Role of Media and Kangaroo Courts**

**CONTEXT:** Recently, Chief Justice of India N.V. Ramana said that the media is running "kangaroo courts" in India.

#### **About Droupadi Murmu**

#### **More about the news**

- **Kangaroo Courts and justice delivery:**
  - The Chief Justice of India (CJI) NV Ramana said that the kangaroo courts being run by the media are detrimental to the health of the country's democracy.

- Ill-informed, biased and agenda-driven debates in the media on issues pending in courts are affecting justice delivery.
- **Against the judges:**
  - He said concerted campaigns against judges, particularly on social media, and media trials affect judicial functioning.
  - It is not easy to swallow when false narratives are created about the "easy life" led by judges.
- **Print, electronic & social media:**
  - Print media still has certain degree of accountability.
  - Whereas, electronic media has zero accountability as to what it shows vanishes in thin air.
  - Still worse is social media.
- **Media regulations:**
  - Owing to the frequent transgressions and consequent social unrests, there is a growing demand for stricter media regulations and accountability.
  - The top judge advised the media to "self-regulate and measure their words".

### More about media trials

- **About:**
  - 'Trial by media' is a recently coined term and is used to denote a facet of 'media activism.'
  - It means "the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a Court of law."
- **Impact of media trials on justice delivery:**
  - **Pressure on judges:**
    - Media activism imposes an indirect pressure on the adjudicating authorities to deliver justice to victims who may interfere with the trial proceedings and may cause prejudice to the accused and the chance of proving his innocence.
  - **Right to privacy:**
    - They invade their privacy which causes a breach of the Right to Privacy guaranteed under Article 21.
  - **The news is whatever sells the best:**
    - But the need to compete for commercialization and more views has transformed the media today into a full-fledged game for viewership. The name of the game is ratings, viewership, eyeballs, and commercials.
  - **Sensationalism:**
    - The recent example of prioritisation and extreme coverage of a superstar's son over alleged drug abuse as opposed to covering the death of protesting farmers is one of the many instances where media has shown that it seeks to cover sensational news more than any other.
    - This means, whatever catches and grasps the attention of the public. Or, in other words, 'sensationalism'.

### Kangaroo Court

- The phrase "Kangaroo Court" is used against a judicial system where the judgement against the accused is usually predetermined.
- Moreover, the system does not work on the standards of law or justice.
- In Kangaroo Court, the procedure is only conducted as a formality.
- Kangaroo Courts are known for working against the phrase "innocent until proven guilty".
- The court does not allow to appeal against its judgement.
- The Kangaroo Courts were common during the Stalin era in the Soviet Union, famous as the "Moscow Trails" of the Soviet Great Purge.

### 2. Jammu and Kashmir Public Safety Act (PESA)

**CONTEXT:** Several youths of Jammu and Kashmir were taken into preventive detention under the controversial Public Safety Act (PSA).

### More about the news

- Public Safety Act (PSA), allows detention for up to two years without a trial.

- Held under this Act, they are sent to jails outside the Union Territory and have lost all contact with kin.
- One unofficial estimate suggested around 200 youth faced detentions under the PSA this year.
  - Most of them were those who had past involvement in street protests.

### More about Public Safety Act

- **About:**
  - The Jammu & Kashmir Public Safety Act (PSA), 1978 is a preventive detention law.
  - Under this, a person is taken into custody to prevent him or her from acting in any manner that is prejudicial to “the security of the state or the maintenance of the public order”.
  - By definition, preventive detention is meant to be preventive, not punitive.
    - This broad definition is the most common ground used by a law enforcement agency when it slaps the PSA on an individual.
  - The law was introduced by Sheikh Abdullah (Father of Farooq Abdullah) in 1978.
  - It is often referred to as a “draconian” law.
  - **Objective:**
    - It was brought in to prevent timber smuggling and to keep the smugglers in prison.
  - **Key Provisions:**
    - It allows for administrative detention for up to two years “in the case of persons acting in any manner prejudicial to the security of the State”, and for administrative detention for up to one year where “any person is acting in any manner prejudicial to the maintenance of public order.
    - It comes into force when the Divisional Commissioner or the District Magistrate passes an administrative order.
    - After the amendments to the PSA in 2012, the detention of a person below the age of 18 was strictly prohibited under this Act.
  - **Advisory board:**
    - Government has to set up an advisory board within 4 weeks of the detention order.
    - Board must determine if there are sufficient grounds for detention within 8 weeks.
  - Section 22 of the Act provides protection for any action taken “in good faith” under the Act:
    - “No suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act.”
    - So, the District Magistrate who has passed the detention order has protection under the Act.
  - **Section 23 of the Act:**
    - The government is empowered to “make such rules consistent with the provisions of this Act, as may be necessary for carrying out the objects of this Act”.
  - **Outside J&K:**
    - In August 2018, the Act was amended to allow individuals to be detained under the PSA outside the state as well.

### 3. WTO Ministerial Meeting on Fisheries Subsidies

**CONTEXT:** Recently, the WTO Agreement on Fisheries Subsidies, adopted at the 12th Ministerial Conference marks a major step forward for ocean sustainability by prohibiting harmful fisheries subsidies.

#### Background

- The Agreement on Fisheries Subsidies delivers on the mandate from the 11th Ministerial Conference, as contained in the Buenos Aires Ministerial Decision, and on the Sustainable Development Goal (SDG) 14.6.
- It is part of the 2030 Agenda for Sustainable Development adopted by all United Nations member states in 2015, and affirms the WTO's role in the global fisheries subsidies agenda.

#### Recent decisions taken

- Unreported and Unregulated (IUU) fishing: It will prohibit subsidies from being provided for Illegal, Unreported and Unregulated (IUU) fishing and overfished stocks.
  - The Agreement will eliminate the subsidies granted to fishing vessels or fishing operators engaged in IUU fishing.
  - Under the Special and Differential Treatment (S&DT), Developing Countries and Least Developed Countries (LDCs) have been allowed a transition period of two years from the date of entry into force of this Agreement.
- Fishing on high seas: The Agreement also prohibits providing subsidies for fishing on high seas, which are outside the jurisdiction of coastal countries and Regional Fisheries Management Organisations/ Arrangements.
- No prohibition has been imposed on a WTO Member regarding granting or maintaining subsidy to its vessel or operator as long as it is not carrying out IUU.
- No prohibition on providing subsidies has been imposed for fishing regarding overfished stocks as long as such subsidies are implemented to rebuild the stock to a biologically sustainable level.

#### **4. 5G and Fiberization in India**

**CONTEXT:** Recently, India is preparing to auction off about 72 GHz of airwaves to roll out 5G services in the country.

##### **Fiberisation**

- The process of connecting radio towers with each other via optical fibre cables is called fiberisation.
  - A fiber optic cable is a network cable that contains strands of glass fibers inside an insulated casing. They're designed for long-distance, high-performance data networking, and telecommunications.
    - The optical fibre works on the principle of total internal reflection (TIR)?
- Usage: It helps to:
  - Provide full utilisation of network capacity,
  - Carry large amounts of data once 5G services are rolled out.
  - Aid in providing additional bandwidth and stronger backhaul support.
- Backhaul component: The backhaul is a component of the larger transport that is responsible for carrying data across the network.
  - It represents the part of the network that connects the core of the network to the edge.
  - As a result, fibre backhaul remains an important part of transport across all telecoms.
- Optical media: Also called Fibre-based media, provides almost infinite bandwidth and coverage, low latency and high insulation from interference.
  - With 5G, it will also be necessary to increase the density of mobile towers to provide better coverage to consumers and businesses.
  - This calls for increased requirements for fibre deployment.

##### **Tower Fiberization in India**

- To transition into 5G, India needs at least 16 times more fibre.
- In India, currently only 33% of the towers are fiberised, compared to the 65%-70% in South Korea and 80%-90% in the U.S., Japan and China, according to a 2021 report by India Infrastructure Research.
- The fibre kilometre (fkm) per capita in India is lower than other key markets.
- Ideally, a country needs 1.3 km of fibre per capita to ensure good fiberisation.
  - India's fkm is just .09 compared to 1.35 in Japan, 1.34 in the U.S. and 1.3 in China, the report noted.

##### **Advantages of 5G**

- High speeds: 5G works faster on mobile phones and other devices when compared to 4G and 4G LTE.
- Low latency: 5G has low latency when compared to 4G that will support new applications such as AI, IoT, and virtual reality efficiently. It enables mobile phone users to open a web page and browse things without any hassles.
- Increased capacity: 5G has the capacity to deliver up to 100 times more capacity than 4G. It allows companies to switch between cellular and Wi-Fi wireless strategies that will help a lot to experience better performance.

- More bandwidth: It increases the bandwidth that will help transfer the data as soon as possible. Mobile phone users can ensure a faster connection with more bandwidth after choosing a 5G network.
- Powering innovation: 5G technology is the perfect choice for connecting with a whole range of different devices including drones and sensors. It gives ways to power the adoption of IoT allowing industries to enhance their productivity and other things.
- Less tower congestion: 4G cellular networks often get congested which will result in various problems while accessing important data. 5G networks allow users to avoid them due to better speed and more bandwidth.
- 5G places a lot of importance on energy efficiency. This will mean lower energy bills for service providers and longer battery life for mobile devices.
- 5G technology will bring positive change in the governance of the country, ease of living, and ease of doing business. It will boost growth in agriculture, health, education, infrastructure, and logistics.

### 5. Monkeypox

**CONTEXT:** Recently, the World Health Organisation has declared the global monkeypox outbreak a 'public health emergency of international concern' (PHEIC).

#### About

- Declaring a global emergency means the monkeypox outbreak is an “extraordinary event” that could spill over into more countries and requires a coordinated global response.
- The WHO had previously declared emergencies for public health issues such as the Covid-19 pandemic, the 2014 West African Ebola outbreak, the Zika virus in Latin America in 2016, and the ongoing effort to eradicate polio.

#### Monkeypox

- **About:**
  - It is a viral zoonotic disease that occurs primarily in tropical rainforest areas of Central and West Africa.
  - Caused by monkeypox virus, a member of the Orthopoxvirus genus in the family Poxviridae.
  - The clinical presentation of monkeypox resembles that of smallpox, a related orthopoxvirus infection which was declared eradicated worldwide in 1980.
- **Symptoms:**
  - Fever
  - Rash and swollen lymph nodes
  - Headaches and nausea
- **Transmission:**
  - Mostly transmitted to people from wild animals such as rodents and primates.
  - Human-to-human transmission also occurs.
  - Monkeypox virus is transmitted from one person to another by contact with lesions, body fluids, respiratory droplets and contaminated materials such as bedding.
- **Outbreaks:**
  - The first case of monkeypox was reported in 1958 in monkeys and in humans in 1970 in the western Africa.
  - Nigeria witnessed the biggest outbreak of the disease in 2017.
  - Thereafter, the disease has been reported in many countries including the USA, Singapore, UK.
- **Difference from smallpox:**
  - The main difference between symptoms of smallpox and monkeypox is that the latter causes lymph nodes to swell (lymphadenopathy) while smallpox does not.
- **Present Cases:**
  - The majority of reported cases of monkeypox currently are in males, and most of these cases occur among males who identified themselves as gay, bisexual and other men who have sex with men (MSM), in urban areas, and are clustered in social and sexual networks.

**ANSWER WRITING**

**Q. Displacement of tribals and other marginalised communities has been one of the major consequences of development process in India. Comment. 150 words)**

**Introduction**

“If you are to suffer, you should suffer in the interest of the country.” - Jawaharlal Nehru, speaking to villagers who were to be displaced by the Hirakud Dam in 1948. Since independence, tribals and other marginalised communities have been at the forefront of receiving negative externalities, arising from our modern developmental process. Displacement of these groups has been one of the major consequences of this process, because they live amidst India’s verdant forests, flowing rivers and on top of the most valuable minerals.

**Body**

- As these resources have gained market value, the tribals have had to make way for commercial forest enterprises, large and small dams and mines in the name of development.
- As sociologist Walter Fernandes has documented, no fewer than 40% of those displaced by development projects are tribals, although they constitute only 8% of the population.
- In the past, dam projects like Tehri and Sardar Sarovar, displaced thousands and many have been uprooted four-five times within decades. For example-Thirty thousand villagers of Madhya Pradesh were first displaced during the construction of the Rihand dam (late '50s); later again when coal was found in the mid-70s; a third time, to make room for industry; and finally, when the Singrauli mega thermal power station was mooted in the late '80s.
- Tribals and marginalised populations traditionally depend on common property for survival, unlike farmers who own land individually. Thus, their rights over natural resources are easily appropriated, for example- Van Gujjars, the nomads of the Rajaji National Park have been resisting their ouster, bereft of any legal recourse.
- Despite having adequate laws like Forest Rights Act 2006, Land Acquisition Act 2013, Panchayats (Extension to Scheduled Areas) Act 1996 for empowering and providing rights to tribals; issues related to land conflict, rehabilitation and resettlement still persist. For example: Protest of Dongria kondh tribes against Bauxite mining in Niyamgiri hills, Odisha

**Conclusion**

Our development process should not be lopsided, benefiting only a privileged section of the population. Additionally, Social Impact Assessment and, rights of tribals and marginalised should be prioritized in any developmental activity, without which vision of inclusive development will remain incomplete..

**MCQs**

- 1) Consider the following statements about Kangaroo Courts:
  1. The phrase "Kangaroo Court" is used against a judicial system where the judgement against the accused is usually predetermined.
  2. In Kangaroo Court, the procedure is only conducted as a formality.
  3. The Kangaroo Courts were common during the Stalin era in the Soviet Union, famous as the "Moscow Trails" of the Soviet Great Purge.

Which of the above statement(s) is/are correct?

a. 1 and 2 only      b. 2 and 3 only      c. 1 and 3 only      **d. 1, 2 and 3**
- 2) Consider the following statements regarding Jammu and Kashmir Public Safety Act:
  1. Public Safety Act (PSA), allows detention for up to five years without a trial.
  2. The Jammu & Kashmir Public Safety Act (PSA), 1978 is a preventive detention law.

Which of the above statement(s) is/are correct?

a. 1 only      **b. 2 only**      c. Both 1 and 2      d. Neither 1 nor 2
- 3) Consider the following statements regarding World Trade Organisation:
  1. It was founded in **1995** and is the successor to the **General Agreement on Tariffs and Trade (GATT)**
  2. It is headquartered at Paris.
  3. WTO is the only international organisation that deals with the rules of trade between countries.

Which of the above statement(s) is/are correct?

a. 1 and 2 only      b. 2 and 3 only      **c. 1 and 3 only**      d. 1, 2 and 3
- 4) Consider the following statements about Monkeypox:
  1. The World Health Organisation has recently declared the global monkeypox outbreak a 'public health emergency of international concern' (PHEIC).

2. It is a viral zoonotic disease that occurs primarily in tropical rainforest areas of Central and West Africa.
3. It is mostly transmitted to people from wild animals such as rodents and primates and human to human transmission does not occur.
- Which of the above statement(s) is/are correct?
- a. **1 and 2 only**      b. 1 and 3 only      c. 3 only      d. All are correct.
- 5) Consider the following statements about Rohingyas:
1. They are an ethnic group, representing the largest percentage of Muslims in Myanmar and predominantly live in the Western Myanmar province of Rakhine.
2. They are described by the United Nations (UN) as one of the most persecuted minorities in the world.
- Which of the above statement(s) is/are correct?
- a. 1 only      b. 2 only      c. **Both 1 and 2**      d. Neither 1 nor 2
- 6) Consider the following statements:
1. GI tag for rose onion is given to the state of Maharashtra and GI tag for white onion is given to the state of Karnataka.
2. Other GI tag products of the state of Maharashtra include Chiku, Keshar mango, and bananas.
- Which of the above statement(s) is/are correct?
- a. 1 only      b. **2 only**      c. Both 1 and 2      d. Neither 1 nor 2
- 7) Consider the following statements:
1. When any two objects orbit one another, they do so around a mutual center of gravity called their barycenter.
2. For a system like Earth and the Sun, the barycenter is close to the center of the Sun.
3. The barycenter of our solar system constantly changes position and depends on where the planets are in their orbits.
- Which of the above statement(s) is/are correct?
- a. 1 and 2 only      b. 1 and 3 only      c. 2 and 3 only      d. **1, 2 and 3**
- 8) Consider the following pairs:
- | <b>Tribal Revolution</b> | <b>Significance</b>                            |
|--------------------------|--|
| 1. Santhal revolution    | Against oppression by revenue officials.       |
| 2. Paika revolution      | Original first war of Indian Independence.     |
| 3. Kol revolution        | Against the takeover of tribal land.           |
| 4. Bhil revolution       | Against the intrusion into the Bhil territory. |
- How many of the above pairs are matched correctly?
- a. Only one pair      b. Only two pairs      c. Only three pairs      d. **All four pairs**
- 9) Consider the following statements:
1. The High Court in consultation with the State governments sets up special courts, for issuing bail.
2. The Sessions Court identifies the under-trial prisoners who cannot comply with bail conditions.
- Which of the above statement(s) is/are correct?
- a. **1 only**      b. 2 only      c. Both 1 and 2      d. Neither 1 nor 2
- 10) Consider the following statements:
1. The borrowing by State public sector undertakings or their special purpose vehicles (SPVs) will be considered as borrowing by the State government needing consent.
2. All States in India have enacted the Fiscal Responsibility and Budget Management (FRBM) Act.
3. The Ministry of Finance follows the recommendations of the Finance commission while exercising the powers to approve state borrowings under Article 293(3).
- Which of the above statement(s) is/are correct?
- a. 1 and 2 only      b. 1 and 3 only      c. 2 and 3 only      d. **1, 2 and 3**