CURRENT AFFAIRS FOR UPSC LAW OPTIONAL MAINS | ALL SUBJECTS

MONTH | SEPTEMBER 2022

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CONSTITUTIONAL LAW

JUSTICE D.Y. CHANDRACHUD APPOINTED AS EXECUTIVE CHAIRMAN OF NATIONAL LEGAL SERVICES AUTHORITY.

BACKGROUND | The position was vacant after the last serving chairperson- Justice U.U. Lalit who was elevated as the 49th Chief Justice of India.

APPOINTMENT | President Droupadi Murmu - appointed Justice D.Y. Chandrachud as executive chairman of the NALSA - confirmed by the Law Ministry of India.

Legal Services Authority of India was established to create a nationwide network uniform in nature that would provide competent legal services to the weaker sections of the society at no cost.

KEY OBSERVATION |

The post of executive chairperson of the authority is held by the second senior most judge of the Supreme court of India while the Chief Justice of India holds the post of the Patron-in- Chief.

Constituted under the Legal Services Authorities Act of 1987, the National



- The Authority came into force only in November 1995.
- The Supreme Court of India first started the 'National Legal Services Day' in 1995

HOW THIS CURRENT AFFAIR CAN BE USED? Topic 2 – if questions related to NALSA is asked you can use this current affairs.

Expected Question- In India, National Legal Service Authority aims at providing legal aids to the needy and the person who actually could not afford legal expenses or have lack of knowledge on the legal procedure. In light of this statement discuss in detail about the NALSA and also discuss the person who are entitled for such legal aid.

NO SPECIFIC LAW AGAINST HATE SPEECH: ELECTION COMMISSION

CASE | ASHWINI KUMAR UPADHYAY VS UNION OF INDIA AND ORS - WP(C) 943/2021

Facts |Ashiwini Upadhyay – Filled PIL - seeking directions to the Centre to take apposite steps to implement recommendations of the Law Commission Report 267 on hate speech.

ECI reply for implementation | ECI said that due to the lack of a specific law against hate speech and rumour mongering during polls, it has to resort to the ***Indian Penal Code (IPC)*** and the ***Representation of People (RP) Act*** to ensure that members of political parties do not make statements which can create disharmony among sections of the society.



KEY OBSERVATION | The ECI said the Law Commission of India, in its 267th Report, had not made any recommendations with regard to a specific query (from the Supreme Court) on "***whether the ECI ought to be conferred with the power to derecognise a political party, disqualifying its members for committing the "offence of hate speech***". Neither did the Law Commission make any recommendations to the Parliament to strengthen the Election Commission to curb the "menace of hate speeches irrespective of whenever made"

CURRENT CHANGE | Though the Model Code of Conduct had no "legal sanctity", the ECI said it had introduced guidelines in the Code asking parties to desist from making communal statement.

HOW THIS CURRENT AFFAIR CAN BE USED? Related to powers of ECI – Topic 9 (c)– Constitutional Law.

Expected Question- Whether Election Commission of India is having enough power to curb the menace of hate speech during elections

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NO SEPARATE DOMICILE FOR A STATE: SUPREME COURT

CASE | STATE OF TELANGANA V. B SUBBA RAYADU, SLP (C) 1565-66 OF 2021.

BACKGROUND | Petitioner – working as government officials in Andhra Pradesh (Now Telengana) – Under Andhra Reorganisation Act 2014 officials must opt between Telengana and AP – Petitioners opted for Telengana based on local residence but government gave Ap tentatively – This was challenged in

High court : Gave order in favour of petitioners



SC HELD | State reorganisation laws cannot curtail a citizen's right to reside and settle in any part of the country, Under the Constitution, India is a Union of States. **BECAUSE |** Every part of every State is an integral and inseverable part of India.

KEY OBSERVATION |

The Andhra Pradesh State Reorganisation Act, 2014 or any other guidelines cannot take away from citizens the right to reside and settle in any part of the country. It is true that when a State is divided and the employees and officers of the State government have to be allotted to the two States, such allocation has to be done on the basis of the rules and regulations and by guidelines. However, such rules, regulations and guidelines have to be construed harmoniously with the fundamental rights guaranteed under the Constitution.

THUS ruled in favor of petitioner

HOW THIS CURRENT AFFAIR CAN BE USED?

Relates to topic 1 Constitutional and Administrative law - Federalism. No direct question on domicile asked but you can use this ruling – No separate domicile for state – single domicile rule in India when question ask how India is federal state with unitary features.

It is related to TOPIC 2 – Fundamental rights – Article 19 (e) To reside and settle in any part of India

CRIMINALISATION OF MARITAL RAPE, SUPREME COURT SEEKS CENTRE'S RESPONSE

CASE | RIT FOUNDATION V. UNION OF INDIA AND OTHER CONNECTED MATTERS

ISSUE | whether husbands must be prosecuted for non-consensual sex with their wives.

FOCUS | Issue focuses on the exception in rape law in the Indian Penal Code which dismisses the idea of rape within marriage.



QUESTION | whether or not a married woman has bodily autonomy.

In short, whether a husband should accept that his wife's "no means no", and any transgression would amount to rape.

KEY OBSERVATION |

The petitioners had challenged the constitutionality of the marital rape exception under Section 375 IPC (rape) on grounds that it discriminated against married women who are sexually assaulted by their husbands. Under the exception given in Section 375 of the IPC, sexual intercourse or sexual acts by a man with his wife, the wife not being minor, is not rape.

HOW THIS CURRENT AFFAIR CAN BE USED? Can be used under following heads

Topic 2 : Fundamental rights – Article 21- whether not providing autonomy over married women's body violate their personal liberty and life.

Article 14 – Whether classification of women on basis of marriage for rape amounts to discrimination ?

Indian Penal Code – Topic 12 Offence Against Women (Most related)

ALL PETITIONS CHALLENGING CAA TO BE HEARD BY THREE-JUDGE SUPREME COURT BENCH

BACKGROUND 220 petitions challenging the Citizenship Amendment Act (CAA) of 2019- October 31 and said it will refer the case to a three-judge Bench.

The Issue | Citizenship law violates Article 14 of the Constitution

What Article 14 says ? It guarantees that no person shall be denied the right to equality before law or the equal protection of law in the India.

KEY OBSERTAVTION |

The protests against the provisions of the CAA in these states is against legitimisation of all immigrants from any country irrespective of their faith rather than excluding only Muslims.

The Supreme Court has developed a two-pronged test to examine a law on the grounds of Article 14. Any differentiation between groups of persons must be founded on intelligible differentia; For a law to satisfy the conditions under Article 14, it has to first create a "reasonable class" of subjects that it seeks to govern under the law. Differentia must have a **rational nexus** to the object sought to be achieved by the Act.

HOW THIS CURRENT AFFAIR CAN BE USED? Issue hits article 14 – TOPIC 2 – FUNDAMENTAL RIGHTS – Any question on article 14 – you can relate this current affairs.

INCIDENTAL TOUCH | Citizenship Act amends constitution thus related to - Topic 11 of Constitutional and Administrative Law; Amendment– 5 Particular Question was asked explicitly on this particular topic in the last 10 years.

Expected Question: "Amendment to the constitution shows that the law of the country are changing as per the need of this changing dynamics" Based on this question explain the significance and amendment as prescribed in Constitution of India with recent examples.



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EXPLAINED | DEATH PENALTY: SUPREME COURT CALLS FOR GIVING "REAL" OPPORTUNITY TO THE ACCUSED

BACKGROUND | SC - referred to a Constitution Bench the question of how to provide accused in death penalty cases a "meaningful, real and effective" hearing of their mitigating circumstances before a trial judge.

DETAILS | SC said the presentation of mitigating factors by an accused to avoid the extreme penalty of death was a valuable right**.**

DISPARITY | While the state is given a chance to present aggravating circumstances against the accused throughout the duration of a trial, the accused is given a chance to show mitigating circumstances only after conviction.



The accused can scarcely be expected to place mitigating circumstances on the record, for the reason that the stage for doing so is after conviction. This places the convict at a hopeless disadvantage, tilting the scales heavily against him.

POINT TO NOTE | ART 21 read along with Menaka Gandhi v UOI - mandates that any procedure violating right to life shall be fair. THUS!

Mithu vs State of Punjab judgment states that death penalty is not a mandatory punishment, offences resulting in death are punishable by death only when they meet the "rarest of rare"**.**

Thus outcome of this case may help in achieving fair procedure

HOW THIS CURRENT AFFAIR CAN BE USED? Mains related to IPC – Offence against human body and Punishments

Expected Question- Death penalty is considered as an antithesis to many principles of Human Rights and should only be used in rarest of rare case" On basis of this statement, write about Death Penalty in India and also mention the pardoning powers.

SLIGHT RELATION – You can relate with art 21 – how procedure must be made fair to curtail life

SUPREME COURT AXES 51-YEAR-OLD CURB, SINGLE WOMEN GET EQUAL ABORTION RIGHTS

CASE | X VS PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, GOVT OF NCT OF DELHI, C.A 5802/2022

BACKGROUND | 25-year-old unmarried woman - Delhi High Court seeking termination of her pregnancy of 23 weeks and 5 days stating that her pregnancy arose out of a consensual relationship, however, she could not give birth to the child as she was an unmarried woman and her partner had refused to marry her. Delhi High Court refused Interim relief to her.



Held | Supreme Court declared that unmarried women are also entitled to seek abortion of pregnancy in the term of 20-24 weeks arising out of a consensual relationship.

POINT | Court ruled that exclusion of unmarried women who conceive out of live-in relationship from the Medical Termination of Pregnancy Rules is unconstitutional.

KEY OBSERVATION|

All women are entitled to safe and legal abortion", the Court said noting that the 2021 amendment to the Medical Termination of Pregnancy Act does not make a distinction between married and unmarried women.

The rights of reproductive autonomy give an unmarried women similar rights as a married women", the Court added. The object of section 3(2)(b) of the MTP Act is in allowing woman to undergo abortion after 20-24 weeks. Therefore, including only married and excluding unmarried woman will be violative of Article 14 of the Constitution.

The artificial distinction between married and unmarried women cannot be sustained. Women must have autonomy to have free exercise of these rights", - Justice Chandrachud.

HOW THIS CURRENT AFFAIR CAN BE USED?TOPIC 2 | Directly related to ART 14 : Any question appear connect and say how classification of women on marital status under MTP act was artificial

SUPREME COURT FIXES THREE KEY QUESTIONS FOR EXAMINING EWS QUOTA.

CASE | Janhit Abhiyan v. Union of India with 32 Connected matters. WP(C) no. 55/2019

BACKGROUND | The Petitions challenged the 103rd Amendment act 2019 which provide **economic reservation in jobs** and education was proposed to be provided by inserting clause (6) in Articles 15 and 16 of the Constitution through the amendment.

ISSUE 1| Whether the amendment breaches the Basic Structure by permitting the state to make special provisions, including reservation, based on economic criteria,

ISSUE 2 | whether it violates the Basic Structure by allowing the state to make special provisions in relation to admissions to private unaided institutions.

ISSUE 3 | whether the Basic Structure is trampled upon by the constitutional amendment by excluding SEBC/OBC/SC/ST communities from the scope of the EWS quota.

HOW THIS CURRENT AFFAIR CAN BE USED? Topic 2 – Article 14, 15 and 16 – another major reservation case if decided.

Expected Question- "Judiciary is vested with the powers of Judicial Review of any matter which is antithetical to the Constitutions", In light of this statement, discuss the validity of the 103rd Amendment to the constitution.

NEED TO RETHINK COLLEGIUM SYSTEM OF APPOINTMENT: LAW MINISTER

BACKGROUND | Union Minister for Law and Justice said the collegium system of appointments to the higher judiciary - process acceleration

THE COLLEGUM SYSTEM| Supreme Court collegium - a five-member body, which is headed by the incumbent Chief Justice of India (CJI) and comprises the four other senior most judges of the court at that time.



High Court collegium is led by the incumbent Chief Justice and four other senior most judges of that court.

NOTE | The composition of the collegium keeps changing, and its members serve only for the time they occupy their positions of seniority on the Bench before they retire.

Judges of the higher judiciary are appointed only through the collegium system, and the government has a role only after names have been decided.

KEY OBSERVATION | Article 124(2) says that: Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts and shall hold office until he attains the age of sixty-five years.

In the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.

The collegium system evolved out of a series of judgments of the Supreme Court that are called the "Judges Cases". The collegium came into being through the interpretations of the relevant provisions of the Constitution that ARE made in these Judges case.

HOW THIS CURRENT AFFAIR CAN BE USED? Topic 6 of Constitutional Law - Appointment of Judges. 2 -3 Questions have been asked explicitly on this particular topic for the last ten years, so a question can be expected from the topic.

Expected Question- Recommendation of collegium is taken for appointment of Judges of High Court? What is the rationale behind it? Explain it from the perspective of the appointment of the Judges in the High Courts in India.

EXPLAINED | WHAT IS CONSTITUTIONAL MONARCHY

BACKGROUND | King Charles III's address to the British Parliament: upholding Britain's system of constitutional monarchy.

CONSTITUTIONAL MONARCHY | A constitutional monarchy is a form of monarchical government established under a constitutional system which acknowledges an elected or hereditary monarch as head of state.

Modern constitutional monarchies usually implement the concept of separation of powers, where the monarch either is the head of the executive branch or simply has a ceremonial role.

A constitutional monarchy is a form of government in which a king or queen reigns with limits to their power along with a governing body (i.e. Parliament), giving rise to the modern adage.



DETAILS | In representative democracies that are constitutional monarchies, like the United Kingdom, the monarch may be regarded as the head of state but the prime minister, whose power derives directly or indirectly from elections, is head of government.

ii. Britain does not have a single constitutional document, it still has laws and carefully documented traditions that together form a Constitution, one that binds the king.

These rules have accumulated in centuries of legislation and a surrounding mass of convention which make the king a constitutional monarch.

HOW THIS CURRENT AFFAIR CAN BE USED? Topic 1 of Constitutional and Administrative Law – Constitution and Constitutionalism. 6 Particular Question was asked explicitly on this particular topic in the last 10 years.

Expected Question: "Democracy is rule of the law where the poor will have more power than the rich, because there are more of them, the will of the majority is supreme". Based on this, explain the significance and application of Democracy and How it is anti thesis of constitutional monarchy

EXPLAINED | THE CRIMINAL PROCEDURE (IDENTIFICATION) RULES.

BACKGROUND | The Ministry of Home Affairs (MHA) has notified the rules governing The Criminal Procedure (Identification) Act, 2022 that would enable police and central investigating agencies to collect, store and analyse physical and biological samples including retina and iris scans of arrested persons.

NOTE | The Act seeks to repeal the Identification of Prisoners Act, 1920, which is over 100-years-old.

The new Act empowers a Magistrate to direct **any person** to give measurements, which till now was reserved for convicts and those involved in heinous crimes.



The National Crime Records Bureau (NCRB) under MHA will be the one-stop agency for storing and preserving the data of arrested persons.

IMPORTANT ASPECTS | The Opposition members termed it "unconstitutional" and an attack on privacy as it allowed the record of samples of even political detainees.

As per the rules, measurements include: finger-impressions, palm-print, footprint, photographs, iris and retina scan, physical, biological samples and their analysis, behavioral attributes including signatures, handwriting or any other examination referred to the Code of Criminal Procedure, 1973.

Provisions for destruction of records in case a suspect is acquitted are yet to be specified by the NCRB.

HOW THIS CURRENT AFFAIR CAN BE USED? Topic 2 - Constitution and Administrative Law, Fundamental Rights – How this bill threatens personal liberty under art 21.

SUPREME COURT: UPHELD THE VALIDITY OF HARYANA SIKH GURUDWARAS ACT

CASE TITLE |Harbhajan Singh v. State of Haryana and others WP(c) SC 782 2022

BACKGROUND | Impugned act brought in legal procedure by which the gurdwaras in the state may be brought effectively and permanently under the exclusive control of the Sikhs of Haryana.

The law challenged as violative of the Sikh Gurdwara Act, 1925, the State Reorganization Act, 1956, the Punjab Reorganization Act, 1966 & Interstate Corporation act 1957.

DECISION- Haryana Sikh Gurudwara (Management) Act 2014 – Upheld

KEY OBSERVATION | Supreme court has observed the following points:



Upholding the validity of the Act, the Supreme Court said that the Act had left the religious affairs of the Sikhs exclusively in the hands of the Sikhs in the same manner as was under the 1925 Act.

Since the affairs of the Sikh minority in the state are to be managed by the Sikhs alone, it cannot be said to be violative of any of the fundamental rights conferred under Articles 25 and 26 of the Constitution," the court said.

It rejected Centre's argument that Haryana had no power to make a law on the matter.

HOW THIS CURRENT AFFAIR CAN BE USED? Topic 2 – Constitutional Law – Fundamental right of minorities – any question asked on their autonomy right you can quote this CA