

## **Modern Legislations; Boon or Bane to New India** (Updates and Observations on the Recent Legislations)

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"Today we have a goal to fulfill the dreams of an independent India. We have a target to build a new India before the 100th year of independence, 2047", avowed Prime Minister Narendra Modi after unveiling the hologram statue of Netaji Subhas Chandra Bose at India Gate on 22<sup>nd</sup> January, 2022. It is an irrefutable point of view that the New envisioned India can take its shape only through the proper guidance and support of the qualified legislators and the quality legislations. And the enactments of such revamping legislations are possible only when the legislators take into consideration the mind and need of the 'aam aadmi' of India. In his maiden speech in Lok Sabha on June 11, 2014, Mr. Modi proclaimed, "Victory teaches us many things and we should learn also. Victory teaches us to be humble. I give my trust to this Parliament, I believe that the seniors here, from whatever group they may be, with their blessings, we will get that strength which will save us from arrogance. It will teach us every moment to be humble. Whatever be the number here, but I will not move forward without you. We should not move on the basis of numbers. We should move on the basis of the power of collective approach. We want to move forward with the feeling of collective approach". But what is happening in reality is contradictory to what the Prime Minister spoke of. The entire country is watching the proceedings in the Parliament on whether the legislations in the recent years are enacted, based on the majoritarianism or in the interest of the public. The lack of discussions and consultations over Bills being passed the Parliament is very obvious.

Nine minutes in Rajya Sabha and three minutes in Lok Sabha: that's how long the Farm Laws Repeal Bill, 2021, for which hundreds of farmers sacrificed their lives, took to be passed on 29 November, 2021 — without any discussion. This is the reality of law making in India today. The present Union government has often faced criticism for rushing Bills. The last session saw 15 Bills — 14 in Lok Sabha and one in Rajya Sabha — being passed in less than 10 minutes, and 26 Bills in less than half-an-hour. In its second term, over six Parliament sessions, the Modi government has passed 42 Bills in less than half-an-hour, and 19 in less than 10 minutes, according to PRS Legislative Research data. While many of the Bills were ordinary in nature, some deserved serious discussion.

For instance, the 14 Bills passed in less than 10 minutes in Lok Sabha in the Monsoon Session included the General Insurance Business (Nationalisation) Amendment Bill (discussed for 8 minutes), The Insolvency and Bankruptcy Code (Amendment) Bill (5 minutes), The Tribunals Reforms Bill (9 minutes), and The Taxation Laws (Amendment) Bill (6 minutes). The Opposition wanted the general insurance Bill to be referred to a standing committee; in Rajya Sabha, but the Bill was passed in 22 minutes.

According to the PRS data, the recent Monsoon Session perhaps holds the worst record when it comes to Bills being rushed through in Parliament. The other Bills passed in under 10 minutes were: The National Institutes of Food Technology, Entrepreneurship and Management Bill, The Inland Vessels Bill, The Coconut Development Board (Amendment) Bill, The Limited Liability Partnership (Amendment) Bill, The Deposit Insurance and Credit Guarantee Corporation

(Amendment) Bill, The Commission for Air Quality Management in National Capital Region and Adjoining Areas Bill, The Constitution (Scheduled Tribes) Order (Amendment) Bill, The Central Universities (Amendment) Bill, The National Commission for Homoeopathy (Amendment) Bill and The National Commission for Indian System of Medicine (Amendment) Bill.

### **Some of the newly enacted Laws:**

#### **1. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 passed on March 24, 2021.**

The Juvenile Justice (Care and Protection of Children) Act, 2015 states that the adoption of a child is final on the issuance of an adoption order by the civil court. The Bill provides that instead of the court, the district magistrate (including additional district magistrate) will issue such adoption orders.

Under the 2015 Act offences committed by juveniles are categorized as heinous offences, serious offences and petty offences. Serious offences include offences with three to seven years of imprisonment. The Bill adds that serious offences will also include offences for which maximum punishment is imprisonment of more than seven years, and minimum punishment is not prescribed or is less than seven years.

#### **2. The Constitution (One Hundred and Twenty-seventh Amendment) Act, 2021**

The Constitution (One Hundred and Twenty-Seventh Amendment) Bill, 2021 was introduced in Lok Sabha by the Minister of Social Justice and Empowerment, Dr. Virendra Kumar, on August 9, 2021. The Bill amends the Constitution to allow states and union territories to prepare their own list of socially and educationally backward classes.

The Constitution (One Hundred and Second Amendment) Act, 2018 gave constitutional status to the NCBC (National Commission for Backward Classes), and empowered the President to notify the list of socially and educationally backward classes for any state or union territory for all purposes. The 2021 Bill amends this to provide that the President may notify the list of socially and educationally backward classes only for purposes of the union government. This union list will be prepared and maintained by the union government. Further, the Bill enables states and union territories to prepare their own list of socially and educationally backward classes. This list must be made by law, and may differ from the union list.

**Consultation with the NCBC:** Article 338B of the Constitution mandates the union and state governments to consult the NCBC on all major policy matters affecting the socially and educationally backward classes. The Bill exempts states and union territories from this requirement for matters related to preparation of their list of socially and educationally backward classes.

#### **3. The Farm Laws Repeal Act, 2021**

The Farm Laws Repeal Bill, 2021 was introduced in Lok Sabha on November 29, 2021 by the Minister of Agriculture and Farmers' Welfare, Mr. Narendra Singh Tomar.

**Repeal:** The Act repeals the three farm laws passed by Parliament in September 2020. These are: (i) the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, (ii) the Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, and (iii) the Essential Commodities (Amendment) Act, 2020. In January 2021, the Supreme Court had stayed the implementation of the three farm laws.

#### 4. The Election Laws (Amendment) Act, 2021

The Election Laws (Amendment) Bill, 2021 was introduced in the Lok Sabha on December 20, 2021. This Act amends the Representation of the People Act, 1950 and the Representation of the People Act, 1951 to implement certain electoral reforms. The 1950 Act provides for allocation of seats and delimitation of constituencies for elections, qualifications of voters, and preparation of electoral rolls. The 1951 Act provides for the conduct of elections, and offences and disputes related to elections.

<b>The Existing Act</b>	<b>The Amendments</b>
<p><b>Linking electoral roll data with Aadhaar:</b> The 1950 Act provides that people may apply to the electoral registration officer for inclusion of their name in the electoral roll of a constituency. After verification, if the officer is satisfied that the applicant is entitled to registration, he will direct the applicant’s name to be included in the electoral roll.</p>	<p>The Bill adds that the electoral registration officer may require a person to furnish their Aadhaar number for establishing their identity. If their name is already in the electoral roll, then the Aadhaar number may be required for authentication of entries in the roll. Persons will not be denied inclusion in the electoral roll or have their names deleted from the roll, if they are unable to furnish Aadhaar number due to sufficient cause as prescribed. Such persons may be permitted to furnish alternate documents prescribed by the union government.</p>
<p><b>Qualifying date for enrolment in electoral roll:</b> Under the 1950 Act, the qualifying date for enrolment in the electoral roll is January 1 of the year in which such roll is being prepared or revised. This implies that a person who turns 18 (i.e., eligible to vote) after January 1 can enroll in the electoral roll only when the roll is prepared/ revised the next year.</p>	<p>The Bill amends this to provide four qualifying dates in a calendar year, which will be January 1, April 1, July 1, and October 1.</p>
<p><b>Requisitioning of premises for election purposes:</b> The 1951 Act permits the state government to requisition premises needed or likely to be needed for being used as polling stations, or for storing ballot boxes after a poll has been conducted.</p>	<p>The Bill expands the purposes for which such premises can be requisitioned. These include using the premises for counting, storage of voting machines and poll-related material, and accommodation of security forces and polling personnel.</p>
<p><b>Gender-neutral Provisions:</b> The 1950 Act permits certain persons who are ordinarily resident in a constituency to register in electoral rolls. Such persons include those holding a service qualification, such as members of the armed forces or central government employees posted outside</p>	<p>The Bill replaces the term ‘wife’ with ‘spouse’ in both the Acts.</p>

<p>India. The wives of such persons are also deemed to be ordinarily residing in the same constituency if they reside with them. The 1951 Act enables the wife of a person holding a service qualification to vote either in person or by postal ballot.</p>	
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## 5. The Prohibition of Child Marriage (Amendment) Bill, 2021

The Prohibition of Child Marriage (Amendment) Bill, 2021 was introduced in Lok Sabha on December 21, 2021. The Bill amends the Prohibition of Child Marriage Act, 2006 to increase the minimum age of marriage of females. The bill has been sent to the Parliamentary Committee for further deliberation and discussion.

<b>The Existing Act</b>	<b>The Proposed Bill</b>
<p><b>Increasing the minimum age of Marriage of Females:</b> The Act provides that the minimum age of marriage is 21 years in case of males, and 18 years in case of females.</p>	<p>The Bill increases the minimum age in case of females to 21 years. The Bill also amends certain other laws relating to marriage to increase the minimum age of marriage of females under those laws to 21 years. These are: (i) Indian Christian Marriage Act, 1872, (ii) Parsi Marriage and Divorce Act, 1936, (iii) Special Marriage Act, 1954, (iv) Hindu Marriage Act, 1955, and (v) Foreign Marriage Act, 1969.</p>
<p><b>Time period for filing petition to annul child marriage:</b> Under the Act, a child marriage is one where either of the parties to the marriage is a child (i.e., their age is less than the minimum age of marriage). The Act provides that a child marriage may be annulled by the party who was a child at the time of marriage. Such party may file a petition in a district court for a decree of nullity. The petition should be filed before such party completes two years of attaining majority (i.e., completes 20 years of age).</p>	<p>The Bill amends this to allow such party to file the petition before completing five years of attaining majority (i.e., completes 23 years of age). Amendments relating to the increase of minimum age of marriage of females and time period for filing petition to annul child marriage shall come into force two years from the date of assent.</p>
	<p><b>Overriding effect:</b> The Bill adds that that the provisions of the Act shall have an overriding effect over any other law, custom, usage or practice governing the parties to the marriage.</p>

## 6. Medical Termination of Pregnancy (MTP) Amendment Act, 2021

The Medical Termination of Pregnancy (Amendment) Act, 2021 has come into force with effect from 24<sup>th</sup> September 2021.

### Key Points about the MTP Act:

The Medical Termination of Pregnancy Act, 1971 (“MTP Act”) was passed due to the progress made in the field of medical science with respect to safer abortions.

In a historic move to provide universal access reproductive health services, India amended the MTP Act 1971 to further empower women by providing comprehensive abortion care to all.

The new Medical Termination of Pregnancy (Amendment) Act 2021 expands the access to safe and legal abortion services on therapeutic, eugenic, humanitarian and social grounds to ensure universal access to comprehensive care.

**Key Provisions of the MTP Amendment Act, 2021:**

	<b>MTP Act 1971</b>	<b>MTP Amendment Act 2021</b>
Indications (Contraceptive failure)	Only applies to married women	Unmarried women are also covered
Gestational Age Limit	20 Weeks for all indications	24 Weeks for rape survivors. Beyond 24 weeks for substantial fetal abnormalities.
RMP Opinion required before termination	One RMP till 12 weeks Two RMPs till 20 weeks	One RMP till 20 weeks Two RMPs 20-24 weeks Medical Board approval after 24 weeks.
Breach of the woman’s confidentiality. The “name and other particulars of a woman whose pregnancy has been terminated shall not be revealed”, except to a person authorized in any law that is currently in force.	Fine up to Rs. 1000	Fine and/or Imprisonment of 1 year.

**Significance:**

The new law will contribute towards ending preventable maternal mortality to help meet the Sustainable Development Goals (SDGs) 3.1, 3.7 and 5.6

SDG 3.1 pertains to reducing maternal mortality ratio whereas SDGs 3.7 and 5.6 pertain to universal access to sexual and reproductive health and rights.

The amendments will increase the ambit and access of women to safe abortion services and will ensure dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy.

**Issues:**

One opinion is that terminating a pregnancy is the choice of the pregnant woman and a part of her reproductive rights while the other is that the state has an obligation to protect life, and hence should provide for the protection of the foetus. Across the world, countries set varying conditions and time limits for allowing abortions, based on foetal health, and risk to the pregnant woman.

**Not allowed beyond 24-weeks:**

The Act allows abortion after 24 weeks only in cases where a Medical Board diagnoses substantial foetal abnormalities.

This implies that for a case requiring abortion due to rape, that exceeds 24-weeks, the only recourse remains through a Writ Petition.

In *Justice K.S. Puttaswamy (Retd.) vs. the Union Of India And Others* (2017), the court recognized the constitutional right of women to make reproductive choices, as a part of personal liberty under Article 21 of the Indian Constitution.

## **7. Surrogacy (Regulation) Act, 2021 and Assisted Reproductive Technology (Regulation) Act, 2021**

Surrogacy (Regulation) Act , 2021 and Assisted Reproductive Technology (Regulation) Act, 2021 to come into force w.e.f January 25, 2022

On December 25, 2021, the Surrogacy (Regulation) Act, 2021 received President's assent in order to regulate the practice and process of surrogacy, constitute National Assisted Reproductive Technology and Surrogacy Board, State Assisted Reproductive Technology and Surrogacy Boards.

The Surrogacy (Regulation) Bill, 2019 was introduced by the Minister of Health and Family Welfare, Dr. Harsh Vardhan in Lok Sabha on July 15, 2019. The Bill defines surrogacy as a practice where a woman gives birth to a child for an intending couple with the intention to hand over the child after the birth to the intending couple.

**Regulation of surrogacy:** The Act prohibits commercial surrogacy, but allows altruistic surrogacy. Altruistic surrogacy involves no monetary compensation to the surrogate mother other than the medical expenses and insurance coverage during the pregnancy. Commercial surrogacy includes surrogacy or its related procedures undertaken for a monetary benefit or reward (in cash or kind) exceeding the basic medical expenses and insurance coverage.

**Purposes for which surrogacy is permitted:** Surrogacy is permitted when it is: (i) for intending couples who suffer from proven infertility; (ii) altruistic; (iii) not for commercial purposes; (iv) not for producing children for sale, prostitution or other forms of exploitation; and (v) for any condition or disease specified through regulations.

**Eligibility criteria for intending couple:** The intending couple should have a 'certificate of essentiality' and a 'certificate of eligibility' issued by the appropriate authority.

A certificate of essentiality will be issued upon fulfillment of the following conditions: (i) a certificate of proven infertility of one or both members of the intending couple from a District Medical Board; (ii) an order of parentage and custody of the surrogate child passed by a Magistrate's court; and (iii) insurance coverage for a period of 16 months covering postpartum delivery complications for the surrogate.

The certificate of eligibility to the intending couple is issued upon fulfillment of the following conditions: (i) the couple being Indian citizens and married for at least five years; (ii) between 23 to 50 years old (wife) and 26 to 55 years old (husband); (iii) they do not have any surviving child (biological, adopted or surrogate); this would not include a child who is mentally or physically

challenged or suffers from life threatening disorder or fatal illness; and (iv) other conditions that may be specified by the regulations.

**Eligibility criteria for surrogate mother:** To obtain a certificate of eligibility from the appropriate authority, the surrogate mother has to be: (i) a close relative of the intending couple; (ii) a married woman having a child of her own; (iii) 25 to 35 years old; (iv) a surrogate only once in her lifetime; and (v) possess a certificate of medical and psychological fitness for surrogacy. Further, the surrogate mother cannot provide her own gametes for surrogacy.

**Appropriate authority:** The central and state governments shall appoint one or more appropriate authorities within 90 days of the Bill becoming an Act. The functions of the appropriate authority include; (i) granting, suspending or cancelling registration of surrogacy clinics; (ii) enforcing standards for surrogacy clinics; (iii) investigating and taking action against breach of the provisions of the Bill; (iv) recommending modifications to the rules and regulations.

**Registration of surrogacy clinics:** Surrogacy clinics cannot undertake surrogacy related procedures unless they are registered by the appropriate authority. Clinics must apply for registration within a period of 60 days from the date of appointment of the appropriate authority.

**Parentage and abortion of surrogate child:** A child born out of a surrogacy procedure will be deemed to be the biological child of the intending couple. An abortion of the surrogate child requires the written consent of the surrogate mother and the authorization of the appropriate authority. This authorization must be compliant with the Medical Termination of Pregnancy Act, 1971. Further, the surrogate mother will have an option to withdraw from surrogacy before the embryo is implanted in her womb.

**Offences and penalties:** The offences under the Act include: (i) undertaking or advertising commercial surrogacy; (ii) exploiting the surrogate mother; (iii) abandoning, exploiting or disowning a surrogate child; and (iv) selling or importing human embryo or gametes for surrogacy. The penalty for such offences is imprisonment up to 10 years and a fine up to 10 lakh rupees.

## **8. The Dam Safety Act, 2021**

The Dam Safety Bill was passed by Parliament on 13 December, 2021 amid strong objections from the Opposition. Earlier, it was passed by the Lok Sabha in August 2019.

The Bill proposes to help all states and Union Territories adopt uniform dam safety procedures. It aims to “provide for surveillance, inspection, operation and maintenance of the specified dam for prevention of dam failure-related disasters, and to provide for institutional mechanism to ensure their safe functioning and for matters connected therewith or incidental thereto.”

A National Committee on Dam Safety with a three-year tenure, comprising the chairman of the Central Water Commission, a maximum of 10 representatives of the union government in the ranks of joint secretary, a maximum of seven representatives of the state governments, and three experts, will be formed as part of the Act. A state dam safety organization will be formed as well, which will be responsible for the dam safety. This organization is empowered to investigate

and gather data for proper review and study of the various features of the design, construction, repair and enlargement of dams, reservoirs and appurtenant structures.

### **Context of Dam Safety Bill**

Most of the dams in India are constructed and maintained by the states, while some of the bigger dams are managed by autonomous bodies such as Damodar Valley Corporation or Bhakra Beas Management Board of Bhakra-Nangal Project.

The union government has presented the Dam Safety Bill, 2018 against the backdrop of over 5,200 large dams in India and about 450 dams under construction right now. “Due to lack of legal and institutional architecture for dam safety in India, dam safety is an issue of concern. Unsafe dams are a hazard and dam break may cause disasters, leading to huge loss of life and property,” said a June 13 statement, revealing the Cabinet approval for the enactment of the Bill.

### **Tamil Nadu’s objection**

Chief Minister M K Stalin, who has been opposing the idea of a dam safety Act, issued a statement, strongly condemning the Union government for not considering the interest of states. While the AIADMK has also supported DMK’s stand against the Bill, the Tamil Nadu legislative Assembly had earlier passed a unanimous resolution demanding proper consultation with the states before arriving at a decision. Political parties in Tamil Nadu and the state government oppose the Bill for several reasons. They allege it contains clauses which violate the rights of the state, especially with respect to the dams constructed by it in neighbouring states, and will cause problems in maintenance and operation. The main concern of the state is about retaining its power in controlling the dams, autonomy, and ownership of the assets. In a country where most of the dams are built, operated, maintained and owned by state governments, the impact of the Act remains to be seen when long-pending disputes arise.

In a recent move, the DMK Lok Sabha member S. Ramalingam, representing Mayiladuthurai constituency in Tamil Nadu, has moved the Madras High Court challenging the constitutional validity of Dam Safety Act, 2021 on the grounds that it goes against the federalism and is beyond the legislative competence of the Union government, on 5 January 2022.

### **The recent Government Orders of Tamil Nadu:**

#### **1. Tamil Nadu increases maternity leave for government employees to 12 months (Government Order (MS no. 84), dated 23.08.2021)**

The Tamil Nadu government has increased the period of maternity leave for women government employees to 12 months, from the existing nine months. The announcement was made by state Finance Minister PTR Palanivel Thiagarajan during his budget speech on Friday, August 13. The 12 months of paid leave is applicable to women employees with less than two surviving children and will come into effect from July 1, 2021. The Tamil Nadu Finance Minister also announced other schemes for the welfare of government employees. The lump sum grant from the Family Security Fund paid to the family of a government employee who dies while in service has been increased to Rs 5 lakhs. The Tamil Nadu government was previously giving Rs 3 lakh to the kin of deceased state government employees.

The increase in the Dearness Allowance (DA) given to government servants will be applicable from April 1, 2022. In April 2020, the Tamil Nadu government had notified that the DA will be frozen at the current rates till July 2021. Tamil Nadu increases the DA every six months, and the last increase was at 17%.

## **2. The Amendment of Rules 8 and 9 of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules of 2003:**

This amendment of 14 February, 2022 makes it mandatory for District Collectors to consider the objection to location of liquor shops.

As per the amendment to Rule 8, no State-run liquor shop through Tamil Nadu State Marketing Corporation (Tasmac) should commence business unless the location of the shop had been approved by the Collector. Further, a proviso to the rule states that no such approval shall be granted unless the Collector had considered and disposed of objections, if any.

Similarly Rule 9 relating to shifting or change of location of a liquor shop too had been amended and proviso had been added to it to making it mandatory for the Collectors to consider and dispose of representations objecting to the change in the location. Apart from these two amendments, the government had also inserted Rule 9A.

The new rule, providing appeal remedy, states that any person aggrieved against an order passed by the Collector either under Rule 8 or Rule 9 could prefer an appeal before the Commissioner of Prohibition and Excise within 30 days from the date of the receipt of the order. The Commissioner must dispose of the appeal within 60 days.

## **3. GO of Social Welfare and Women Empowerment Department of Tamil Nadu:**

The announcement made by the Hon'ble Chief Minister regarding Rehabilitation and protection of children who had lost both the parent or single parent due to Covid-19. (Government Order (Ms. No. 24) dated 11.06.2021.

1. Rs 5 lakh will be deposited in banks in the names of children who have lost their parents due to COVID-19 and the amount with interest will be given to them when they complete the age of 18;
2. Admission will be given to these children in government homes and hostels on priority basis;
3. State government will bear all educational expenses of these children up to graduation including hostel fees etc;
4. Rs 3 lakh will be given as immediate relief assistance to woman who have lost her husband due to this infection and have children; similar assistance will be given to men who have lost their wives and have children;
5. Rs 3,000 per month will be given to these children who are being taken care of by a relative or a guardian, till they attain the age of 18;
6. A special committee at the district level will monitor the educational and other wellbeing of these children;

7. All government welfare schemes will be extended to these children on priority basis; a man or woman who have lost their life partner and have children too will get this concession;

8. A steering committee headed by the Finance Secretary and composed of NGOs and other officials will be constituted to form guidelines for implementing the above relief assistance to children who have lost their parents to COVID-19.

#### **4. GO of Youth Welfare and Sports Development Department (Government Order (Ms. No. 46) dated 29.10.2021:**

Through this GO the Government of Tamil Nadu has;

- Designated 'Silambam' as one of the games to be included for the 3% sports quota recruitment in government departments and public sector undertakings (PSUs).
- Recognized 'Silambam' as one of the State sports.
- Silambam was also included as one of the sports disciplines for consideration under sports quota for admission into professional courses like medical, engineering, law etc.
- Postgraduate diploma, diploma and certificate courses in Silambam have been included in the curriculum of the Tamil Nadu Physical Education and Sports University.
- It was included as one of the sports disciplines in State-level school games and has been recognized by the School Games Federation of India as one of its competitions

#### **Recent Court Orders and Observations:**

##### **1. WhatsApp admin cannot be held liable for objectionable content posted by a member:**

The Madras High Court, on 26 December, 2021, in *R. Rajendran vs. The Inspector of Police*, has reiterated the stand taken by the Bombay High Court in the case of *Kishore V. State Maharashtra*, that a group administrator cannot be held vicariously liable for an act of a member of the group, who posts objectionable content. A single-judge bench of Justice GR Swaminathan noted, "If the petitioner had played the role of a group administrator alone and nothing else, then while filing final report, the petitioner's name shall be deleted." This was observed in the plea filed by an Advocate who is an Administrator of a WhatsApp group 'Karur Lawyer' wherein a person named Pachaiyappan allegedly posted certain highly offensive messages, reading of the said messages would cause ill-feeling between two communities.

##### **2. The PIL on the Places of Worship (Special Provisions) Act of 1991:**

The Supreme Court on 12 March, 2021, issued a notice to the Centre on a petition challenging the validity of the Places of Worship (Special Provisions) Act 1991. This law introduced on July 11, 1991, placed a status quo retrospectively on the character of places of worship as existing on the date of Independence, i.e. August 15, 1947.

#### **Key Provisions of the Act:**

- It provides for the maintenance of the religious character of any place of worship as it existed on the 15th day of August 1947, and for matters connected therewith or incidental thereto

- Sections 3 and 4 of the Act declared that the religious character of a place of worship shall continue to be the same as it was on August 15, 1947.
- No person shall convert any place of worship of any religious denomination into one of a different denomination or section.
- All suits, appeals or any other proceedings regarding converting the character of a place of worship, which are pending before any court or authority on August 15, 1947, will abate as soon as the law comes into force. No further legal proceedings can be instituted.
- However, legal proceedings can be initiated after the commencement of the Act if the change of status took place after the cut-off date of August 15, 1947.

**Exceptions: These provisions will not apply to:**

- Ancient and historical monuments and archaeological sites and remains that are covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958.
- The Act also does not apply to the place of worship commonly referred to as Ram Janmabhoomi-Babri Masjid in Ayodhya. This law will have an overriding effect over any other law in force.

**What is the Petition About?**

- A plea filed by BJP leader and advocate Ashwini Kumar Upadhyay in the Supreme Court against various provisions of the Places of Worship (Special Provisions) Act of 1991.
- The challenge to the Act questions the legality of the prohibition it imposes on any community laying claim to the places of worship of another.
- A petition pleads that the Places of Worship Act 1991 is “arbitrary, irrational and retrospective”.
- The petition has challenged the law on the ground that sections of the Act that dealt with the **bar on legal claims violate secularism**.
- It is also argued that the cut-off date of August 15, 1947, is “arbitrary, irrational and retrospective” and prohibits Hindus, Jains, Buddhists, and Sikhs from approaching courts to “reclaim” their places of worship.

**Motivation behind the Petition:**

- When the Babri Masjid-Ram Janmabhoomi dispute was at its height, in the early 1990s, the Vishwa Hindu Parishad (VHP) and other Hindu organisations also laid claim to two other mosques — the **Gyanvapi mosque** in Varanasi and the **Shahi Idgah** in Mathura.
- A district court in Varanasi had entertained a civil suit by a temple trust claiming the site of the **Gyanvapi Mosque** in the holy city, but the order has been challenged in the Allahabad High Court, citing the statutory bar on such suits that seek to alter the places of worship. The matter is still pending.

**3. Live-in relationships part of life: Allahabad high court**

While disposing of petitions filed by two interfaith live-in couples, the Allahabad high court observed that, “Live-in-relationships have become part and parcel of life and stand approved by the Hon’ble Apex Court. Live-in relationship is required to be viewed through the lens of personal autonomy arising out of the right to live guaranteed under Article 21 of the Constitution of India, rather than notions of social morality.” The order was given on October 26, 2021.

**Supreme Court judgments regarding live-in relationships:** In the case of *S. Khushboo vs Kanniammal (2010)* the Supreme Court of India held that there is no legal provision where adults are voluntarily associated in sexual relationships other than marriage, and therefore it does not violate any law. The Court further referred to the case of *Lata Singh vs State Of U.P. & Another (2006)* where the Court held that a major girl is free to marry anyone she likes or may live with anyone she likes.

**Whether maintenance can be obtained in a live-in relationship:** The suggestions of Justice Malimath Committee in the year 2003 was one of the first instances wherein the committee suggested that the definition of Section 125 of the Code of Criminal Procedure, 1973 must be amended accordingly to including a woman who was living with a man as his wife for a significant period during the subsistence of the first marriage.

In the case of *D.Velusamy vs D.Patchaiammal (2010)* the Supreme Court while bestowing the difference between live-in relationships, and relationships like marriage laid down the conditions under which a woman in a live-in relationship can claim maintenance under Section 125 of The Code of Criminal Procedure, 1973. The conditions required to get maintenance out of the live-in relationship are:

- The couple must represent themselves to the society similar to being each other's spouses.
- Both the parties to the relationship must be of legal age to marry.
- Both the parties to the relationship must have qualified to enter into a legal marriage, including being unmarried.
- Both the parties to the relationship must be cohabited voluntarily and must hold themselves similar to being each other's spouse for a significant period.

**Protection of women from domestic violence:** In the case of *Lalita Toppo vs The State Of Jharkhand (2018)*, the Supreme Court of India held that under the jurisdictions of Protection of Women from Domestic Violence Act, 2005 the female live-in relationship partner will be allowed to relieve more than what is bestowed under Section 125 of Code of Criminal Procedure, 1973.

**What are the rights of children born out of live-in relationships:** The Supreme Court of India in the case of *Tulsa & Ors vs Durghatiya (2008)* granted the right to property to the child born in a live-in relationship and held that such child shall not be treated as illegitimate in cases where the parents of such child have cohabited for a considerable period.

The Supreme Court of India in the case of *Revanasiddappa & Anr vs Mallikarjun & Ors (2011)* considered the right to property as a Constitutional right to the illegitimate child and upheld the right to inheritance of the children who were born out of a live-in relationship.

#### **4. 'Going to Church or displaying Holy Cross cannot be ground to cancel SC certificate', Madras HC:**

On 7 October, 2021, Quashing the cancellation order released by a scrutiny committee to scrap the Scheduled Caste certificate of a woman, the Madurai Bench of Madras High Court observed that merely following Christian practices cannot be the ground to cancel the caste certificate. Calling it a bureaucratic narrow-mindedness, the bench further advised the committee to deal with such matters with a broad mindset in the future.

**5. The government should exercise the same degree and level of control over temples as are exercised over churches and mosques:**

The Madras High Court has asked should not the government treat all religious institutions on par and whether temples should continue to remain under its “thumb.” Justice G R Swaminathan of the HC bench has here noted that Tamil Nadu was a land of temples where the shrines have played a central role in our culture. The judge made the observation on 24th February, 2022, while quashing two FIRs filed against the petitioner, activist Rangarajan Narasimhan of Srirangam in Tiruchirappally, who was booked for defamation and promoting enmity between classes for certain social media posts vis-a-vis a temple administration board.

The judge observed that “There is also one fundamental issue concerning the administration of temples. Should they continue to be under the thumb of the government? Should not the government professing to be secular treat all religious institutions on par? Are not knowledgeable and committed activists like T R Ramesh justified in arguing that the government should exercise the same degree and level of control over temples as are exercised over churches and mosques,” the judge asked.

**6. Lavanya suicide case: SC allows CBI probe to continue:**

The Supreme Court on 14, February issued a notice to the respondents of a plea filed by Tamil Nadu challenging the order of the Madurai bench of the Madras High Court transferring the probe of the Thanjavur student suicide case to the Central Bureau of Investigation (CBI). The Supreme Court also said that the investigation will continue as per the High Court order.

**7. Karnataka hijab case:**

The High Court of Karnataka pronounced its judgment on 15<sup>th</sup> March, 2022, on the hijab case upholding the Government order on the ban of wearing hijab in colleges and also remarked that wearing of hijab is not essential to Islam. The High Court had been hearing pleas filed by the students of the Government Women’s Pre-University College. They have been protesting since after they were not allowed to attend classes for being dressed in hijab. Similar protests have also taken place across the state. On February 5, the Karnataka government had passed an order banning clothes that “disturb equality, integrity and public order”. The High Court had passed its interim order on “religious clothes” on February 10. One of the questions the court was dealing with was whether wearing hijab is an essential religious practice in Islam and whether the state can interfere with an individual’s decision to wrap the headscarf.

**8. The Karnataka Protection of Right to Freedom of Religion Bill, 2021:**

The Karnataka Protection of Right to Freedom of Religion Bill, 2021 — otherwise known as the ‘anti-conversion bill’ — though passed in the Legislative Assembly on 24<sup>th</sup> December, 2021, yet to be passed in the upper house of the state. Prior to the Karnataka Bill, there have been state-level “freedom of religion” statutes, known as anti-conversion laws, in **nine states** – Uttar Pradesh, Himachal Pradesh, Gujarat, Chhattisgarh, Odisha, Madhya Pradesh, Arunachal Pradesh, Uttarakhand and Jharkhand. The constitutional validity of the anti-conversion laws in at least four states – Uttar Pradesh, Uttarakhand, Himachal Pradesh and Madhya Pradesh – has been pending before the Supreme Court since February 2021.

**Conclusion:**

Every time the legislators propose a particular legislation, they should focus on maintaining order, establishing standards, protecting liberties and resolving disputes of the nation. The focus should be on the interest of the ordinary poor men and women of the society than the hidden political agenda of the ruling parties. All that the people look from the Parliamentarians is not the creation of a 'New India', but regaining the originality of the independent India and its constitutional values of 'Sovereign, Socialist, Secular, Democratic, Republic nation, imparting the values of Justice, Liberty, Equality and Fraternity to all section of people irrespective of their religion, language, culture, etc., Every enacted legislation of our country should be a "boon and not a bane" to the nation.