

## 11 Jan 2022: UPSC Exam Comprehensive News Analysis

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### A. GS 1 Related

#### Category: WOMEN ISSUES

#### 1. Rape punishable but marital relationship is different: HC

*Syllabus: Role of women and associated issues.*

*Mains: Issue of Marital Rape in India.*

#### Context:

This article talks about Delhi High Court observations on marital rape.

#### What are the Delhi High Court Observations?

- There can be no compromise with women's right to sexual autonomy and any act of rape has to be punished.
- There is a "qualitative difference" between a marital and a non-marital relationship.
- The court said the former entailed a legal right to expect reasonable sexual relations from the spouse and it played a part in the marital rape exemption in criminal law.

### **Criminalisation of Marital Rape:**

- **Arguments in favour of Criminalisation of Marital Rape:**

1. Social practices and legal provisions in India mutually declare the denial of sexual agency and bodily privacy to women.
2. Though married women can approach the court under Section 376 of IPC in case of rape by a stranger, they have no legal recourse in the case of rape by the husband.
3. It stands in complete contrast with the spirit of the Indian Constitution, violating various facets of equal protection, freedom of expression and right to life and liberty clause as enshrined in Articles 14 and 21 of the Indian Constitution.

- **Arguments against Criminalisation of Marital Rape:**

1. Criminalising marital rape will destabilize the sacred institution of marriage.
2. Women can misuse marital rape as a defence on and with every disagreement they face with their husbands.
3. Courts cannot interfere in a personal matter like marriage.

#### **Nut Graf**

*While it is imperative that marital rape be acknowledged as a crime under the statute books, it is also necessary to understand the sanctity of marriage and the qualitative differences between a marital and a non-marital relationship, and give allowances for the same while defining what constitutes marital rape.*

### **B. GS 2 Related**

#### **Category: POLITY AND GOVERNANCE**

#### **1. Two SC judges pull out of Krishna water case**

**Syllabus:** *Structure, organization and functioning of the Executive and the Judiciary.*

**Mains:** *Critical analysis of Recusal of a Judge;*

## ***Prelims: Krishna Water Dispute***

### **Context:**

Justices D.Y. Chandrachud and A.S. Bopanna of the Supreme Court recused themselves from hearing a dispute on the allocation of the Krishna river water.

### **Why did the Judges recuse themselves from the Krishna river dispute?**

- Krishna river water dispute comprises the States of Telangana, Andhra Pradesh and Karnataka.
- Justice Chandrachud is from Maharashtra and Justice Bopanna hails from Karnataka.
- Justice Chandrachud explained to the lawyers present that they had noticed that judges similarly placed like them — hailing from the States in dispute — had recused themselves from the case.

### **What is the Recusal of a Judge?**

- When there is a conflict of interest, a judge can withdraw from hearing a case to prevent creating a perception that she carried a bias while deciding the case. This is known as Recusal of a Judge.
- If a conflict of interest exists, the judge may recuse herself on her own initiative. In addition, any party in a case may make a motion to require the judge to recuse herself from hearing the case.
- The practice stems from the cardinal principle of due process of law that nobody can be a judge in her own case.

### **What is the process for recusal?**

- The decision to recuse generally comes from the judge herself as it rests on the conscience and discretion of the judge to disclose any potential conflict of interest.
- If a judge recuses, the case is listed before the Chief Justice for allotment to a fresh Bench.
- There are no formal rules governing recusals, although several Supreme Court judgments have dealt with the issue.

### **Do judges record reasons for recusal?**

- Because there are no explicit guidelines controlling the procedure, individual judges are frequently left to record grounds for recusal.
- Some judges reveal their motivations in open court; in others, the motivations are apparent.

### **Can a judge refuse to recuse?**

- Once a request is made for recusal, the decision to recuse or not rests with the judge.

- While there are some instances where judges have recused even if they do not see a conflict but only because such an apprehension was cast, there have also been several cases where judges have refused to withdraw from a case.

### What are the Instances of Judges Recusal?

1. It was seen in the case of **Ashok Kumar Yadav v State of Haryana & Ors** that the court held that “the fundamental principles of our jurisprudence is that no man can be a judge in his own cause”.
2. In **Novartis AG v Union of India case**, Justice Markandey Katju withdrew his name from this case as according to him it would not be ideal for him to deal with Novartis appeal.

### What are the concerns with the recusal of judges in India?

1. Judges are compelled to give reasons for their recusal from a particular case because they are bound by the constitutional obligation of transparency and accountability, which is expressed in their oath.
2. In India, there is no particular legislation that mandates a judge's recusal.
3. Lawyers may take unfair advantage of this by asking judges to remove themselves from cases where they believe they will not receive a favourable outcome.
4. Recusal would not be required in circumstances when the judge's concern is not financial.
5. Recusal is also known as the abdication of responsibility. The judge's fiercely autonomous duty as an adjudicator is distinct from maintaining institutional civilities.

### Conclusion:

The current judicial structure in relation to judge recusal differs from what was noticed and seen in the early days of it becoming a common law jurisprudence norm. India is still one of the countries that do not have any measures in place for judges to recuse themselves.

#### Nut Graf

*Recusal can sometimes result in cases being dragged out, causing delays in the delivery of justice. A fine balance should be struck between the right of recusal of judges and the need for the speedy delivery of justice in a country with huge judicial pendency.*

#### C. GS 3 Related

*Nothing here for today!!!*

#### D. GS 4 Related

*Nothing here for today!!!*

## E. Editorials

**Category: INTERNATIONAL RELATIONS**

### **1. The sail that Indian diplomacy, statecraft need**

*Syllabus: Effect of policies and politics of developed and developing countries on India's interests, Indian diaspora.*

*Mains: Significant Aspects of Central Asian Region for India*

**Context:**

This article examines the changing aspects of the Central Asian Region for India.

**What is the significance of the Central Asian Region for India?**

- Over the last two decades, India's continental strategy, which includes Central Asia as a vital link, has evolved in fits and starts.
- It encourages connectivity, nascent defense and security cooperation, the enhancement of India's soft power, and the expansion of trade and investment.

**What are India's Areas of Focus in the Central Asian Region?**

- **Focus on Eurasia:**
  - The developments in Eurasia, such as China's assertion, the United States' abrupt departure of forces from Afghanistan, Russia's changing dynamics and related multilateral systems, and so on, are significant for India.
  - Developing an effective continental strategy for India to tackle the challenge in Eurasia will be a difficult and long-term task.
- **Maritime Security:**
  - India's maritime vision is symbolized by its National Maritime Strategy in which maritime security figures prominently.

- However, maritime security and associated dimensions of naval power are not sufficient instruments of statecraft as India seeks diplomatic and security constructs to strengthen deterrence against the Chinese and the emergence of a unipolar Asia.
- **Chinese Aggression:** The Chinese willingness and capacity for military intervention and power projection are growing far beyond its immediate region.
- **Reducing US Influence:** The American military footprint has shrunk dramatically on the core Eurasian landmass, though it has a substantial military presence on the continental peripheries.
- **Border Issues:** India's partition and the emergence over the past six decades of a persistent two-front threat from Pakistan and China set the stage for a tough continental dimension of our security.
- **Connectivity Challenges:** Connectivity means nothing when access is denied through persistent neighbouring state hostility contrary to the canons of international law. India's physical connectivity issues with Eurasia have only grown stronger as a result of recent Afghan developments. In terms of connectedness, India's marginalization on the Eurasian continent must be reversed.

## Way Forward

India would need to develop a strategic vision and allocate the required resources to achieve our continental goals while also considering our maritime interests. The best way to ensure our long-term security interests is to strike the correct balance between continental and marine security. India will have to define its own continental and marine security criteria that are consistent with its own objectives.

### Nut Graf

*India should strike a balance between continental and maritime security without sacrificing one for the other since both are imperative in securing India's long-term security interests.*

**Category: ECONOMY**

## 1. A BIT to review

*Syllabus: Growth and development*



## ***Mains: India and bilateral investment treaties (BITs)***

### **A BIT to review**

The report of the Standing Committee on External Affairs on 'India and bilateral investment treaties (BITs)' was presented to Parliament.

### **What are bilateral investment treaties (BITs)?**

- A bilateral investment treaty (BIT) is an agreement between two countries that establishes "road rules" for foreign investment in each other's countries.
- BITs are primarily used to protect investments made by investors on a reciprocal basis, laying forth requirements for the host state's regulatory monitoring.

Know More About the [Bilateral Investment Treaty](#).

### **India's approach towards BITs:**

1. **First**, foreign investors have sued India around 20 times for alleged BIT breaches. This made India the 10th most frequent respondent-state globally in terms of investor-state dispute settlement (ISDS) claims from 1987 to 2019 ([UNCTAD](#)).
2. **Second**, India adopted a new Model BIT in 2016, which marked a significant departure from its previous treaty practice.
3. **Third**, India is in the process of negotiating new investment deals (separately or as part of free trade agreements) with important countries such as Australia and the U.K.

### **Challenges:**

1. India has signed very few investment treaties after the adoption of the Model BIT.
2. It will require an overhauling of India's extant treaty practice that focuses on safeguarding certain kinds of regulatory measures limiting BITs to specific sectors.
3. If the Model BIT is tweaked with the sole motive to reduce arbitral discretion, it might result in further skewing the balance towards the host state's right to regulate. This would make it arduous for India to convince its potential treaty partners like the EU which already have misgivings about the Model BIT.
4. **Other Concerns:** Poor governance and the judiciary's fragility in getting its act together are the areas of concern for BIT in India.

### **The Committee Recommendations for the Government:**

1. It recommends that India expedite the existing negotiations and conclude the agreements at the earliest because a delay might adversely impact foreign investment.
2. The committee recognises the potential of BITs in luring foreign direct investment ([FDI](#)).
3. The committee recommends that India should sign more BITs in core or priority sectors to attract FDI.
4. The committee recommends that India's Model BIT be fine-tuned.
5. Tighten the language of the existing provisions to circumscribe the discretion of ISDS arbitral tribunals that offer broad interpretations.
6. Strike a balance between the goals of investment protection and the state's right to adopt bonafide regulatory measures for public welfare.
7. The committee recommends bolstering the capacity of government officials in the area of investment treaty arbitration.
8. The government should promptly assemble an expert team to review the Model BIT. This team should involve critical voices because plural viewpoints can coalesce into an efficacious policy.

### Conclusion:

An institutionalized mechanism is needed for capacity-building through the involvement of public and private universities that have competence in the field of BITs. The government should also consider establishing chairs in universities to foster research and teaching activities in international investment law.

#### Nut Graf

*The government should take the recommendations of the Standing Committee on External Affairs on 'India and bilateral investment treaties (BITs)' into account and fast-track changes to its Model BIT. Unless this is done, the country stands to lose out on an efficacious policy for enhancing FDI and improving its status as an investor-friendly destination.*

## F. Prelims Facts

### 1. Manipur government issues 'disturbed area' notification

#### Context:

The Manipur government issued a notification declaring the entire State, excluding the Imphal Municipal areas, as "disturbed" under Armed Forces (Special Powers) Act, 1958.

#### What is the AFSPA?



Armed Forces (Special Powers) Act (AFSPA) is a Parliamentary act that grants special powers to the Indian Armed Forces and the state and paramilitary forces in areas classified as “disturbed areas”. The objective to implement the AFSPA Act is to maintain law and order in the disturbed areas.

Know More About [Armed Forces Special Powers Act \(AFSPA\)](#).

## 2. Top court to urgently hear hate speeches case

### Context:

The Supreme Court agreed to urgently hear a petition seeking the arrest and trial of people who made hate speeches.

### Hate Speech:

- Hate speech encompasses a wide variety of expressions, including legitimate language, and is defined as any statement of discriminatory hatred toward others.

Know More About [Hate Speech](#).

### G. Tidbits

*Nothing here for today!!!*

### H. UPSC Prelims Practice Questions

**Q1. With respect to Krishna River, which of the following statements is/are correct?**

1. It is the largest river in Peninsular India.
2. It rises in the Western Ghats near Mahabaleshwar in Maharashtra.
3. Musi is the left bank tributary of Krishna.

### Options:

- a. 1 and 2 only
- b. 2 and 3 only
- c. 1 and 3 only
- d. 1, 2 and 3

**Answer: b**

### Explanation

- The Krishna River is the fourth-largest river in terms of water inflows and river basin area in India. **(The Godavari is the largest in peninsular India.) Hence Statement 1 is incorrect.**
- The river rises near Mahabaleshwar in western Maharashtra state, in the Western Ghats range. **Hence Statement 2 is correct.**
- Major tributaries of Krishna River are as follows:
  - **Left:** Bhima, Dindi, Peddavagu, Halia, Musi, Paleru, Munneru.
  - **Right:** Venna, Koyna, Panchganga, Dudhganga, Ghataprabha, Malaprabha, Tungabhadra.
- **Hence Statement 3 is correct.**

### Q2. Mekedatu River Project is a dispute between

- a. Kerala - Tamil Nadu
- b. Andhra Pradesh - Odisha
- c. Karnataka - Tamil Nadu
- d. Andhra Pradesh - Telangana

**Answer: c**

### Explanation

- **Mekedatu River Project:** Mekedatu is a multipurpose (drinking and electricity) project that entails the construction of a balancing reservoir near Kanakapura in Karnataka's Ramanagara district.
- **Karnataka - Tamil Nadu Dispute:** Tamil Nadu has protested Karnataka's plan to build a reservoir at Mekedatu on the Cauvery River. The Karnataka government, on the other hand, has stated that there is no "compromise" on the Mekedatu project and that the state intends to proceed with it.
- Hence Option C is correct.

### Q3. Consider the following statements about Tashkent Declaration:

1. It was signed between India and Pakistan following the war of 1971.
2. The Tashkent Declaration failed to limit any possibility of a future conflict between India and Pakistan.

**Which of the above statements is/are correct?**

- a. 1 only
- b. 2 only

- c. Both
- d. None

**Answer: b**

**Explanation**

- Indian Prime Minister Lal Bahadur Shastri signed the Tashkent Agreement on 10 Jan 1966 with Pakistan's president to put an end to the 17-day war between India and Pakistan. **Hence Statement 1 is incorrect.**
- The agreement was mediated by the Soviet Union which helped restore peace at the borders. Despite being regarded as a huge diplomatic achievement, the Tashkent Declaration did not prevent India and Pakistan from fighting in the future. **Hence Statement 2 is correct.**

**Q4. Consider the following statements:**

1. He established the Belur Math.
2. Netaji Subhas Chandra Bose called him the “maker of modern India”.
3. National Youth Day is celebrated in his honour.

**The above statements describe:**

- a. Swami Vivekananda
- b. Bal Gangadhar Tilak
- c. Dayananda Sarasvati
- d. Ramakrishna Paramahansa

**Answer: a**

**Explanation**

- Swami Vivekananda was influenced by Ramakrishna Paramahansa who became his Guru.
- He established many Mathas in India, the most important being the Belur Math in Belur, Howrah district.
- Netaji Subhas Chandra Bose had called Vivekananda the “maker of modern India.”
- In his honour, the government of India in 1984 declared his birthday 'National Youth Day'.
- Hence Option A is correct.

**Q5. With reference to the ‘National Intellectual Property Rights Policy’, consider the following statements:**

1. It reiterates India's commitment to the Doha Development Agenda and the TRIPS Agreement.
2. Department of Industrial Policy and Promotion is the nodal agency for regulating intellectual property rights in India.

**Which of the above statements is/are correct? [UPSC 2017]**

- a. 1 only
- b. 2 only
- c. Both 1 and 2
- d. Neither 1 nor 2

**Answer: c**

**Explanation**

- National Intellectual Property Rights Policy strives to create an ecosystem in the country that promotes innovation and creativity. The nodal department has been designated as the Department of Industrial Policy and Promotion (DIPP).
- India's commitment to the Doha Development Agenda and the TRIPS Agreement was announced with the introduction of this policy.
- The National Intellectual Property Rights Policy includes all IPRs and puts them together on a single platform. Its goal is to apply global best practices to the Indian situation.
- Hence Both the statements are correct.

### I. UPSC Mains Practice Questions

1. Evaluate the performance of India's social service sector. Give examples of some positive outcomes due to the work done by organizations in this sector. (250 words; 15 marks) GS II (Polity)
2. Is it time to provide a legal backing to the Model Code of Conduct to empower the Election Commission of India to keep the election campaigning in line? Discuss some of the limitations ECI faces in enforcing the Model Code of Conduct at present. (250 words; 15 marks) GS II (Social Justice)