Detailed News Articles: 09 May 2019

May 10, 2019Shiksha IAS Academy

1. ASI identifies rare Indian artefacts seized from smuggler

From idols dating back to the Gupta period (5th-6th Century AD) to terracotta objects of the Harappan culture, a range of Indian antiquities and artefacts that were smuggled have been identified by the Archaeological Survey of India (ASI) during a team's recent visit to the United States.

Details:

- The ASI said a team of two officials visited the U.S. after receiving communication from the office of the Consulate General of India in New York about the seizure of artifacts by the Immigration and Customs Enforcement of U.S. Department of Homeland Security
- The ASI said the team identified close to 100 objects in total, including 17 objects that had been seized by the Department.
- The antiquities comprise beautiful bronzes from the Suttamalli and Sripurantan temples of Tamil Nadu and also a very significant image of Mahakoka Devata.

- Of these, four antiquities were stolen from protected monuments at Karitalai, district Katni in Madhya Pradesh.
- Also smuggled were the stone image of the Buddha of Mathura School, a terracotta image of the Buddha belonging to the Gupta period and a set of 10 copper plates engraved with Quranic verses of the late Mughal Period.

Theft of Artifacts & Antiquities:

- According to Global Financial Integrity, a Washington-based advocacy group, illegal trade in paintings, sculptures, and other artifacts is one of the world's most lucrative criminal enterprises, estimated at $6 billion a year.
- And India, with its cultural heritage, bureaucratic apathy, and tardy implementation of antiquities protection laws, offers smugglers fertile ground to plunder the past and spirit away artefacts for sale in the international market.
- This exploitation continues unabated despite the existence of The Antiquities and Art Treasures Act, 1972 whose aim is to protect "antiquities," an omnibus term that includes, among other items, sculptures in stone, shrines, terracotta, metals, jewelry, ivory, paintings in paper, wood, cloth, skin, and manuscripts over a hundred years old.

Concerns:

- Even though India is a signatory to the 1970 UNESCO treaty, experts say it is extremely tough to retrieve antiquities that have left the country.
- Improper enforcement of law, and lack of punitive action on traders without licences.

Antiquities and Art Treasure Act 1972:

- The Antiquities Act mandates that owners of such art pieces register them with the Archaeological Survey of India (ASI), the nodal agency responsible for archaeological excavations, conservation of monuments, and protection of heritage sites.
- The law also prohibits export of antiquities while permitting their sale within the country only under a license.
- Failure to comply with these rules can result in jail sentences of up to three years, a fine, or both.
- In what is seen as a blatantly unfair clause, the Act also empowers the State to compulsorily acquire an art object from its owner without any reliable assessment of a fair price.

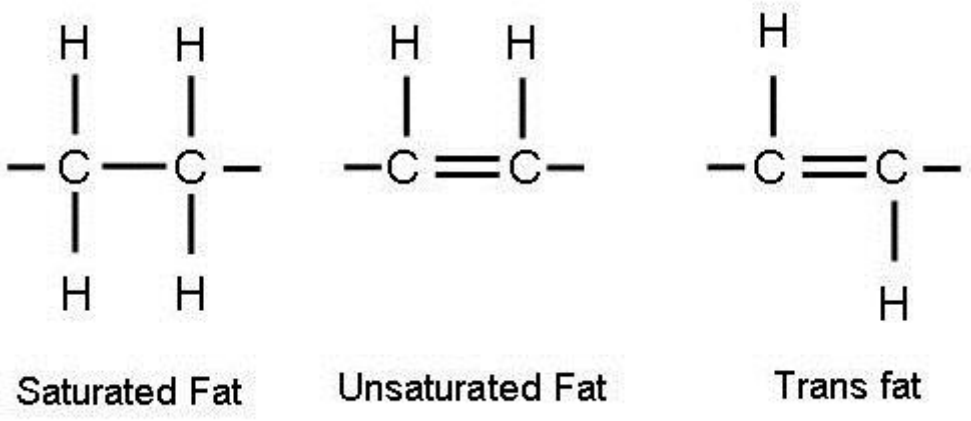
Other legal provisions available in India:

- Antiquities And Art Treasures Act 1972
- Indian Treasure Trove Act 1949
- National Mission On Monuments And Antiquities– it creates a National Register On Artifacts that are unprotected
- National Manuscript Missionfor Documenting Heritage

Archaeological Survey of India:

- The Archaeological Survey of India (ASI), is an attached office under the Department of Culture, Ministry of Tourism and Culture.
- It is the premier organization for the archaeological researches and protection of the cultural heritage of the nation.
- It was founded in 1861 by Alexander Cunningham who also became its first Director-General.
- The most important of the society's achievements was the decipherment of the Brahmi script by James Prinsep in 1837. This successful decipherment inaugurated the study of Indian palaeography.

2. WHO for eliminating industrially produced trans fats by 2023



The WHO has welcomed its partnership with the International Food and Beverage Alliance (IFBA) to achieve the target of eliminating industrially produced trans fats by 2023.

Details:

- Trans fat, also called the worst form of fat in food, responsible for over 5,00,000 deaths globally from coronary heart disease each year.
- The WHO says that eliminating industrially produced trans-fat is one of the simplest and most effective ways to save lives and create a healthier food supply.
- WHO met with IFBA to discuss actions to eliminate industrial trans fats, and reduce salt, sugar and saturated fats in processed foods.
- The meeting also stressed the value of regulatory action on labelling, marketing and urged industry for full adherence to the WHO code of marketing of breast milk substitutes.
- The commitment made by the IFBA is in line with the WHO's target to eliminate industrial trans fat from the global food supply by 2023.
- It is decided by IFBA to ensure that the amount of industrial trans fat in their products does not exceed 2 gram per 100 g fat/oil globally by 2023.

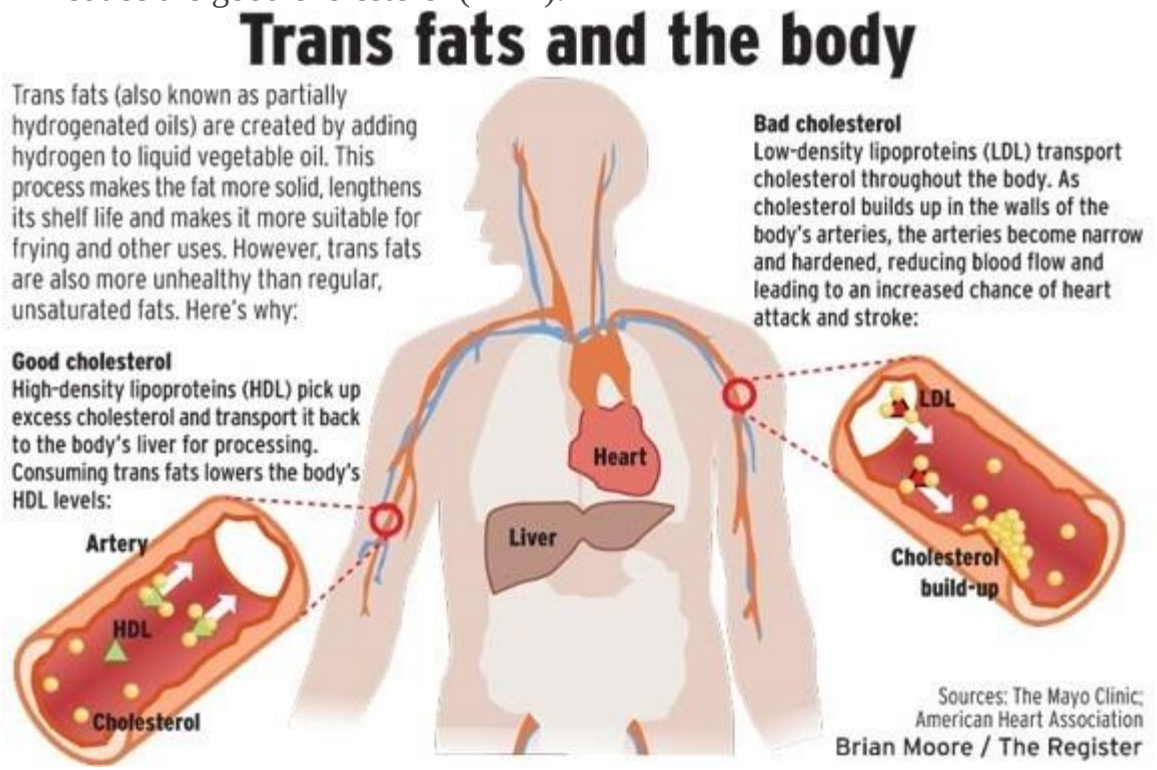
Relevance to India:

India has among the highest number of coronary heart disease cases in the world and must try to beat the deadline.

Trans-fat:

- Trans fats are the most harmful type of fats which can have much more adverse effects on our body than any other dietary constituent.
- These fats are largely produced artificially but a small amount also occurs naturally.

- Artificial TFAs are formed when hydrogen is made to react with the oil to produce fats resembling pure ghee/butter.
- The major sources of artificial TFAs are the partially hydrogenated vegetable oils (PHVO)/vanaspati/ margarine.
- It poses a higher risk of heart disease than saturated fats. Saturated fats raise total cholesterol levels; TFAs not only raise total cholesterol levels but also reduce the good cholesterol (HDL).



3. A travesty of justice

Important facets of the complaint filed:

- The complaint made by the victim of sexual harassment to the judges of the Supreme Court had two equally serious facets.

1. One related to sexual harassment, a very serious charge.
2. The other related to the victimisation of the complainant and her family "at the hands of the Chief Justice of India [CJI]", as claimed by her.

Experts opine that it is this latter charge to which the nation needs to pay equal, if not greater, attention.

- The in-house committee of the Supreme Court spoke: "No substance in the allegations contained in the Complaint dated 19th April, 2019 of a former Employee of the Supreme Court."

- In the absence of any known procedure, the non-observance of the principles of natural justice and the absence of effective representation of the victim, the report, even though not for the public, is non-est and void ab initio.

A Closer Look into Specifics:

- The charge on this count, as per her affidavit, involves the following: after the alleged incident on October 11, 2018, her transfer to the Centre for Research and Planning on October 22, 2018, change of position to "Admin, Material Section" on November 16, 2018, issuance of a memorandum on November 19, 2018, by Deepak Jain, Registrar, accusing the victim of violating conduct rules and seeking an explanation, her third transfer to the Library Division on November 22, 2018, the issuance of a memorandum on November 26, 2018 rejecting her explanation and proposing further action, her suspension on November 27, 2018 and the communication of December 18, 2018 from the Registrar that the charges against her stood proved.
- On December 21, 2018 she was dismissed from service.
- Meanwhile, according to her affidavit, on November 27, 2018 her husband, a head constable with the Delhi Police, Crime Branch Division, was transferred to the Third Battalion.
- On December 8, 2018 her husband, and the latter's brother, also a constable with the Delhi Police, were suspended over telephone, and the orders followed the next day.
- On January 2, 2019, an inquiry was initiated by a Deputy Commissioner of Police against her husband on the ground that "unsolicited calls were made to the Office of the Hon'ble Chief Justice amounting to official misconduct".
- On January 11, 2019, the victim and her husband were summoned to Delhi's Tilak Marg police station by Station House Officer (SHO) Naresh Solanki.
- In their presence, the SHO called the Registrar, Mr. Jain, to discuss ways to reach the residence of CJI Ranjan Gogoi.
- The SHO, the victim and the husband went there, and in the presence of Mr. Jain, the victim was forced to fall at the feet of the CJI's wife.
- Upon their return to the police station, the SHO had a long conversation with the victim and her husband.
- On January 14, 2019 the disabled brother-in-law of the victim, who had been appointed temporary Junior Court Attendant under the orders of the CJI himself on October 9, 2018, was removed from service.
- On March 3, 2019, an FIR was registered on a complaint by a person named Naveen Kumar at the Tilak Marg police station in respect of an alleged demand made by the victim in June 2017 for a bribe of ₹10 lakh for getting him a job in the Supreme Court and his payment of ₹50,000 as advance.
- Based on this FIR, the victim and her husband were arrested from their village in Rajasthan, hand-cuffed and subjected to cruel and inhuman treatment.

- The victim was remanded for a day on March 10, 2019. She was released on bail on March 12, 2019.
- The affidavit in support of the complaint appears truthful and honest.
- The details are heart-rending and extremely troubling, and reflect a deep malaise that appears to have set in in high offices.
- These incidents are all corroborated by official records.
- Experts opine that collectively, they establish beyond doubt the victimisation of the woman, her husband and other family members at the hands of the state machinery, including the Registry of the Supreme Court.

Violations of rights:

- Experts opine that each of these actions is either unconstitutional or illegal or criminal in nature.
- Clearly, they establish a well-designed conspiracy to victimise the victim beyond redemption so as to ensure that neither she nor her husband and her family members could raise their heads again to seek justice in respect of the complaint made against the CJI.
- Together, they constitute gross violations of the constitutional and fundamental rights of the victim and her family members, including those guaranteed under Articles 14 and 21.
- Clearly, the motive behind ensuring grossly inhuman, illegal, unconstitutional and disproportionate punishment to the victim and her family members seems to be to suppress her will and spirit so that she does not raise any charge about the incident of October 11, 2018.

The last straw:

- One thing is clear: **the complainant Naveen Kumar**, who alleged that the victim demanded a bribe and willingly offered, according to his own case, ₹50,000, **has made himself an accomplice to the alleged bribery** to secure public employment.
- He must therefore face the rigour of the law.
- The case on its own showing appears to be concocted and its timing raises serious questions about its authenticity.
- If the bribe was demanded in June 2017, it is a curious coincidence that the complainant from Jhajjar, Haryana surfaces in March 2019 and that too in Tilak Marg police station to make the complaint.
- It activates the entire police machinery against the victim and her family.
- This was the final nail in the coffin, as the proverb goes, pushing the victim and her family to the wall and igniting in them the courage to stand up against the CJI and make the complaint on April 19, 2019.

Dispelling doubts over the delay in the complaint:

- Those who have doubts about the so-called delay in the complaint must be prepared to put themselves in the shoes of the victim, a Class III employee

pitted against the Chief Justice of India, one of the highest and the most powerful constitutional functionaries.
- Her approaching lawyers who are widely respected as human rights activists was natural and cannot be viewed with suspicion under any circumstances.

Some legal precedents:

- The Constitution Bench of the Supreme Court in **Olga Tellis v. Bombay Municipal Corporation** recognised procedural safeguards as necessary and said they have "historical origins in the notion that conditions of personal freedom can be preserved only when there is some institutional check on arbitrary action on the part of public authorities".
- In **Uma Shankar Sistani v. Commissioner of Police, Delhi (1996)**, the Supreme Court ordered the Central Bureau of Investigation to investigate the circumstances under which a false complaint was registered against the petitioner, leading to his arrest.
- The FIR against the victim in this case needs the same treatment.
- Equally, the punishment of dismissal imposed on her is grossly disproportionate, even assuming that the charges against her were proved.
- The Supreme Court has consistently frowned upon such punishments.
- In **Ranjit Thakur v. UOI (1987)**, the court interpreted the **doctrine of proportionality "as part of the concept of judicial review"** to ensure that if the sentence is an outrageous defiance of logic, then it can be corrected.

Grounds for judicial review?

- Irrationality and perversity are recognised grounds of judicial review.
- The court has held that if the punishment is outrageously disproportionate and the court considers it arbitrary in that it is wholly irrational or "a punishment is so excessive or disproportionate to the offence as to shock the conscience of the Court the same can be interfered with".
- Experts opine that on each one of these counts the punishment of dismissal imposed upon the victim is completely arbitrary and perverse. It must go.

There are important questions which arise:

- Where can she and her family members get justice if the police at the highest level is pitted against them?
- Will they ever get a fair investigation and fair reports in the criminal cases? (This appears to be doubtful)
- Can she and her family get justice at all at the hands of the judiciary, considering the respondents would be the CJI and the Supreme Court? Only time will tell.
- But certainly for the present, the picture is dark for them.
- All these raise extremely troubling and discomforting thoughts in the minds of many.

A Critical Perspective:

- Critics opine that in this particular case, the main question was whether the Supreme Court would live up to the standards of fairness it expects of all authorities while inquiring into a former woman employee's complaint of sexual harassment and victimisation against the Chief Justice of India, Ranjan Gogoi.
- An ad hoc committee, following an informal procedure, has concluded that the allegations have "no substance", however, the findings will not be made public.
- Moreover, the report cannot be reviewed judicially.
- No one else, not even the complainant, knows what evidence was examined and who else testified apart from herself.
- All that is known is that she was heard, and questioned, at two sittings.

The Power Imbalance:

- She later withdrew from the inquiry, saying she was denied the help of a lawyer or a representative, that **she found the questions from a panel of three sitting Supreme Court judges quite intimidating**, and that she was not clear how her testimony was being recorded.
- Critics opine that there is no doubt that the committee remained impervious to the power imbalance in the situation.
- Perhaps she ought not to have pulled out from the probe, despite these grievances.
- The panel's conclusion would have been even starker had she been present to hear how Justice Gogoi defended himself; and who among the court officials, if any, answered her specific and documented charges about the administrative harassment she was put through following the alleged incident of sexual harassment.
- The most relevant parts of the complaint were the transfer orders and disciplinary inquiry against her, the role of the court administration in dismissing her, and that of the Delhi Police in arresting her on a complaint of alleged bribery and initiating disciplinary action against her husband and his brother, both police personnel. It is not known if any of these officials were examined.

Dealings of the Court: Less than fair?

- Critics opine that the manner in which the court dealt with the complaint on the administrative side has been less than fair.
- It is true that the in-house procedure devised in 1999 envisages only a committee of three judges to deal with allegations against serving Supreme Court judges.
- The fact that a special law to deal with sexual harassment at the workplace is in force since 2013 appears to have made no difference.
- Unfortunately, the court could not bring itself, even in the interest of appearing fair, to adopt a formal procedure or allow the complainant to have legal representation.

- Critics opine that for all its judicial homilies on fairness, when it comes to dealing with its own the Supreme Court has come across as a prisoner of procedure and displayed an alarming propensity to mix up its institutional reputation with an individual's interest.

Editorial Analysis:

- On May 6th, 2019, the "in-house" panel of the Supreme Court gave a clean sheet to the Chief Justice of India (CJI), Ranjan Gogoi, after an allegation of sexual harassment was levelled against him by a former female staffer of the court.

The normal process that is observed:

- Let us assume, for example, that an average employee in a government department is accused of sexual harassment at the workplace.
- If at the outset, reasonable material is found in favour of the complaint, the accused is suspended from employment pending an inquiry.
- This is considered necessary in administrative law to ensure that the accused does not tamper with evidence or intimidate or influence witnesses.
- Usually, an independent inquiry will follow which will give both parties an opportunity to present evidence and arguments and to examine and cross-examine witnesses.
- If the allegations are found to be true and grave, the accused's employment is terminated; if not, other forms of departmental penalties are imposed.

A question that remains unanswered:

- So why does the entire body of procedural safeguards and legal principles disappear when the accused is the CJI?
- It was on April 19, 2019 that the complainant sent affidavits to the judges of the Supreme Court accusing Justice Gogoi of sexual harassment.
- Experts opine that the complaint is specific, detailed and supported by documentary and other forms of evidence. The account seems, prima facie, consistent, warranting an inquiry.

A Series of flaws:

1. The first reaction was by the court's Secretary General quickly discarding the complaint as one by **"mischievous forces".**
2. The second was unprecedented in the constitutional history of India. The CJI himself constituted an extraordinary hearing in the Supreme Court, along with two other judges, on a non-working day in a case titled "Matter of great public importance touching upon the independence of the judiciary".

The complainant, in her absence, was defamed and her motives questioned. The highest law officers of the country, the Attorney General and the Solicitor General, joined this judicial proceeding. Within no time, an allegation of sexual harassment turned into a matter of judicial independence.

3. The third development was the constitution of an **"in-house" panel** comprising three judges of the Supreme Court. It did not seem to be of concern that to ensure independence of the inquiry and check for bias, members other than judges should have constituted the committee.

How can judges inquire into allegations against a colleague, no less the CJI, who is the 'master of roster' assigning cases to fellow judges and, most significantly, the highest judicial authority in the country, wielding an enormous amount of power and influence?

Further, it is important to note that the constitution of the "in-house" panel was not in compliance with the provisions of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,** a special legislation to curb harassment.
Nor was not in accordance with any requirements under the existing framework of law. Thereafter, the complainant was forced to abstain from the panel, citing various reasons such as the refusal of the panel to allow the presence of her lawyer, refusal to record the proceedings or to inform her of the procedure followed and prohibition on conveying the details of the proceedings to anybody else, including her lawyer.

Moreover, the panel continued the proceedings in her absence and then met the CJI.

Currently, the panel has concluded that the allegations are without "substance".

An Opaque report?

- Experts opine that the finding of the panel that the allegations are baseless is the final blow in a process that has violated all principles of fairness, due process and impartiality.
- The panel's report is not available to the public on reasons of confidentiality.
- Critics ask certain probing questions:
  a) What grounds did the panel cover to reach its conclusion?
  b) What evidence did it examine and rely on?
- Unfortunately, the public have been kept in the dark, having no access to and no knowledge of what transpired in the proceedings. **This has happened at a time when the Right to Information Act, 2005 has revolutionised access to information by the public.**
- The institution of the judiciary has a strong counter-majoritarian character.
- It is considered neutral — free from self-interests.
- It is supposed to protect individual rights and adjudicate freely and fairly.

The emergence of judicial oligarchy?

- However, the current episode points to a larger problem in the Indian democracy: **the emergence of judicial oligarchy.**
- An allegation against a sitting judge is inquired into by three other judges of the court, the accused is exonerated, the panel report is made available only to the CJI and the seniormost judge of the court, and this secrecy is justified by relying on a judgment of the Supreme Court itself.

Concluding Remarks:

- The judges must not reduce the institution to a private club where certain interests are privileged at the cost of judicial integrity. **It is important to note that even the office of the Chief Justice of India is not above the law.**
- "The abuse of greatness is when it disjoins remorse from power," wrote Shakespeare. The decision by the 'in-house committee' is an egregious instance of a hallowed institution abusing its own greatness by letting its power speak, and not the compassion for which it is renowned.
- Is it the Supreme Court as an institution that is responsible for what has happened, or is it the CJI?
- The dichotomy will emerge only when other Justices act independently, uphold the majesty of the law and steer the institution out of troubled waters.

5. Circle of life: on economic growth factoring ecosystem

What is IPBES?

- The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) is an independent intergovernmental body, established by member States in 2012.
- The objective of IPBES is to strengthen the science-policy interface for biodiversity and ecosystem services for the conservation and sustainable use of biodiversity, long-term human well-being and sustainable development.
- IPBES currently has over 130 member States. A large number of NGOs, organizations, conventions and civil society groupings also participate in the formal IPBES process as observers, with several thousand individual stakeholders, ranging from scientific experts to representatives of academic and research institutions, local communities and the private sector, contributing to and benefiting from our work.
- **IPBES is a global scientific body very similar in composition and functioning to the better-known Intergovernmental Panel on Climate Change (IPCC)** that makes periodic reviews of scientific literature to make projections about the earth's future climate. IPCC's assessment reports, which won it the Nobel Peace Prize in 2007, form the scientific basis on which the international negotiations on climate change have been happening.
- IPBES is mandated to do a similar job for natural ecosystems and biodiversity. Formed in 2012, this is the first global assessment report by the IPBES (IPCC, set up in 1988, has produced five assessment reports, and sixth one is under preparation). IPBES has produced a few regional and specialised reports

earlier. **Like IPCC, IPBES does not produce any new science, it only evaluates existing scientific knowledge to make assessments and projections.**

- Unlike IPCC, however, the IPBES assessment reports are likely to feed into and inform several multilateral processes.
- As a matter of fact, the two UN Conventions, i.e. the **Convention on Biological Diversity** that addresses biodiversity issues, and the **Convention on Combating Desertification** that deals with sustainable land management — are likely to be guided by this report in future.
- It is possible that so would be a host of other international agreements and processes, like the Ramsar Convention on wetlands, the Convention on International Trade in Endangered Species, or the Cartagena Protocol on Biosafety.

Why does IPBES matter?

- It is important to note that biodiversity and nature's benefits to people underpin almost every aspect of human development and are key to the success of the new Sustainable Development Goals.
- They help to produce food, clean water, regulate climate and even control disease. Yet they are being depleted and degraded faster than at any other point in human history.
- IPBES is unique – it harnesses the best expertise from across all scientific disciplines and knowledge communities – to provide policy-relevant knowledge and to catalyze the implementation of knowledge-based policies at all levels in government, the private sector and civil society.

What does IPBES do?

- The work of IPBES can be broadly grouped into four complementary areas:
- – Assessments: On specific themes (e.g. "Pollinators, Pollination and Food Production"); methodological issues (e.g. "Scenarios and Modelling); and at both the regional and global levels (e.g. "Global Assessment of Biodiversity and Ecosystem Services").
- – Policy Support: Identifying policy-relevant tools and methodologies, facilitating their use, and catalyzing their further development.

– Building Capacity & Knowledge: Identifying and meeting the priority capacity, knowledge and data needs of our member States, experts and stakeholders.

– Communications & Outreach: Ensuring the widest reach and impact of our work.

What's in the news?

- The recent report by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) is the most comprehensive scientific evaluation ever made of the state of our nature, and gives a detailed

account of health of the species that inhabit this earth, and the condition of habitats that they live in and depend upon.

- **Among the findings that are making global headlines is the assessment that as many as 1 million different species, out of a total of an estimated 8 million plant and animal species, are facing the threat of extinction, more than at any previous time, because of changes brought about in natural environments by human activities.**
- The report says that 75% of Earth's land surface and 66% marine environments have been "significantly altered", and that "over 85%" of wetland area had been lost.
- However, on an average, these trends were less severe on areas controlled or managed by indigenous people and local communities (like tribal communities in India).

Editorial Analysis:

- The overwhelming message from the global assessment report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) is that human beings have so rapaciously exploited nature, and that species belonging to a quarter of all studied animal and plant groups on earth are gravely threatened.
- Experts opine that **if the world continues to pursue the current model of economic growth without factoring in environmental costs, one million species could go extinct, many in a matter of decades.**

Some of the driving factors:

- Catastrophic erosion of ecosystems is being driven by unsustainable use of land and water, direct harvesting of species, climate change, pollution and release of alien plants and animals in new habitats.
- While ecosystem losses have accelerated over the past five decades universally, there is particular worry over the **devastation occurring in tropical areas**, which are endowed with greater biodiversity than others; only a quarter of the land worldwide now retains its ecological and evolutionary integrity, largely spared of human impact.

A Look at Some Specifics:

- Nature provides ecosystem services, but these are often not included in productivity estimates: they are vital for food production, for clean air and water, provision of fuel for millions, absorption of carbon in the atmosphere, and climate moderation.
- The result of such skewed policies, as the IPBES estimates, is that **the global rate of species extinction is at least tens to hundreds of times higher today than the average rate over the past 10 million years, and it is accelerating alarmingly.**

- Ecological economists have for years pointed to the extreme harm that humanity as a whole is courting by modifying terrestrial, marine and freshwater ecosystems to suit immediate needs, such as raising agricultural and food output and extracting materials that aid ever-increasing consumption.
- Expanding agriculture by cutting down forests has raised food volumes, and mining feeds many industries, but these have severely affected other functions such as water availability, pollination, maintenance of wild variants of domesticated plants and climate regulation.
- Losses from pollution are usually not factored into claims of economic progress made by countries, but as the IPBES assessment points out, marine plastic pollution has increased tenfold since 1980, affecting at least 267 species, including 86% of marine turtles, 44% of seabirds and 43% of marine mammals.
- At the same time, about 9% of 6,190 domesticated breeds of mammals used for food and agriculture had gone extinct by 2016, and another 1,000 may disappear permanently.
- Viewed against a shrinking base of wild varieties of farmed plants and animals, all countries have cause for alarm. They are **rapidly emptying their genetic resource kit.**
- Experts opine that **reversing course is a dire necessity to stave off disaster.**
- This can be done by incorporating biodiversity impacts into all economic activity, recognising that irreparably breaking the web of life will impoverish and endanger people everywhere.

Perspective on India:

- The report does not have country-specific information.
- However, as a major biodiversity hotspot, vast areas, especially the coastline, of which are under tremendous stress due to large population, **India can identify with most of the trends pointed out in the report.**
- For example, it says 23% of global land area had shown a reduction in productivity due to degradation, and that between 100 to 300 million people were at an increased risk of floods and hurricanes because of loss of coastal habitats and protection.
- It says plastic pollution had increased 10 times from 1980, the number of large dams (those with a height of 15 m or more) had reached almost 50,000, and that human population had more than doubled since 1970s, and the number of urban areas had doubled since 1992.
- **All these trends have been clearly visible in the case of India, and bring with them the associated risks to natural ecosystems highlighted in the report.**

6. A wake-up call on proprietary seeds

What's in the news?

- Recently, in Gujarat, food and beverages giant PepsiCo dragging potato farmers to court for allegedly growing its registered potato variety used to make 'Lays' chips.
- Four small farmers from Sabarkantha district were sued ₹1.05 crore each, although they cite a law allowing them to grow and sell even registered plant varieties.
- Faced with growing social media outrage, boycott calls from farmers groups and condemnation from major political parties, the company finally agreed to withdraw cases after talks with the Gujarat government.

When was the variety introduced?

- PepsiCo introduced, in 2009, **the FC5 variety of potato** that it uses to make its popular 'Lays' potato chips to India.
- The potato variety is grown by approximately 12,000 farmers who are a part of the company's collaborative farming programme, wherein the company sells seeds to farmers and has an exclusive contract to buy back their produce.
- In 2016, the company registered the variety under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPV&FRA).
- Finding that farmers who were not part of its collaborative farming programme were also growing and selling potatoes of this variety in Gujarat, PepsiCo filed rights infringement cases under the Act against some farmers in Sabarkantha, Banaskantha and Aravalli districts in 2018 and 2019.
- Farmers allege that the company hired a private detective agency to pose as potential buyers, take secret video footage and collect samples from farmers' fields without disclosing its real intent.

What is the farmers' stand?

- The ₹4.2 crore lawsuit against four small farmers in Sabarkantha district was heard by an Ahmedabad commercial court on April 9, 2019 and an ex-parte injunction ordered against the farmers.
- However, farmers' rights groups across the country began a campaign against PepsiCo, requesting the Protection of Plant Varieties and Farmers' Rights Authority to intervene in the case and bear the farmers' legal costs using the National Gene Fund.
- At the April 26th, 2019 hearing, the company offered an out-of-court settlement to the farmers on the condition that they give an undertaking not to grow the registered variety and surrender existing stocks or to join its collaborative farming programme.
- Demanding an unconditional withdrawal of cases, farmers unions affiliated to the ruling Bharatiya Janata Party (BJP) as well as the Left parties joined in boycott calls against PepsiCo products and stoked outrage on social media as well.

- In the midst of an election season in which agricultural issues are in the spotlight, senior political leaders from the Congress and BJP added their criticism.
- On April 27, 2019, the Gujarat government announced that it would back the farmers and join the legal case on their behalf, although it later indicated it was working toward an out-of-court settlement.
- Finally, on May 2, 2019, PepsiCo agreed to withdraw all nine cases after discussions with the government.

What is the legal basis for the suit?

- Both PepsiCo and the farmers cite the same Act to support their opposing positions.
- The PPV&FRA was enacted in 2001 to comply with the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights.
- PepsiCo based its suits on Section 64 of the Act dealing with infringements of the registered breeder's rights and subsequent penalties.
- The farmers' legal case depended on Section 39 of the Act, which allows the cultivator to "save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act" with the sole exception of branded seed. As this section begins with the words "Notwithstanding anything contained in this Act…", farmers claim their rights have precedence.
- Over the last decade, more than 3,600 plant varieties have been registered under the Act, with more than half of the registration certificates going to farmers themselves. This was the first case of infringement of rights under the Act, according to the central agency set up to implement the Act.

Who are the stakeholders and what are the stakes?

- The farmers claim that they bought potato seeds locally, and are within their rights to grow and sell any variety.
- Even PepsiCo supporters admit that they lost the perception battle by dragging small farmers to court for large sums in election season.
- PepsiCo says its collaborative farming programme and registered variety rights are under threat.
- While 'Lays' claims to be a leader in the country's ₹5,500 crore potato chips market, regional players are eating into the market share.
- Farmers rights groups such as the Alliance for Sustainable and Holistic Agriculture saw the issue as a test case on farmers rights in India under the WTO regime, and warned that **a bad precedent could hurt farmers of other crops and endanger the country's food sovereignty.**

What happens next?

- While farmers have claimed victory, they also demanded an apology from PepsiCo and plan to sue for compensation for "harassment" by the company.

- They are also wary of any future government-facilitated negotiations on seed protection and the rights of breeders.
- Pepsico's decision to withdraw the cases was "backed by an assurance from the government for a long term amicable settlement", according to sources familiar with the development, who added that **both the Gujarat government and the Centre were involved in that assurance for further talks.**

Some Salient Points:

- **The Protection of Plant Varieties and Farmers' Rights Act (PPVFRA)**, which introduced intellectual property protection in Indian agriculture, faced its biggest test in its implementation phase of nearly a decade and a half, when PepsiCo India initiated legal proceedings against four farmers in Gujarat for "illegally" growing its potato variety registered under the PPVFRA.
- The company applied for the registration of two hybrid potato varieties FL 1867 and FL 2027 in February 2011.
- These varieties were registered under the PPVFRA in February 2016 for a period of 15 years. PepsiCo marketed the latter variety under the trademark FC-5, and now is claiming that the Gujarat farmers are illegally using this variety.
- After the bases of the cases were questioned, especially by farmers' organisations, the company withdrew its cases, not before trying to bind the farmers it had framed, into its contractual arrangements.

Many questions that prevail:

- PepsiCo may have withdrawn the cases against the farmers, but this unsavoury occurrence brought to the fore many questions that were asked when the PPVFRA was on the drawing board.
- These questions span from some of the contentious provisions of the Act, to the manner in which it is being implemented.
- If these issues are not dealt with in keeping the spirit of the law, and perhaps more importantly, their potential adverse implications on farming communities, farmer-breeder conflicts could become more frequent and this would only push the farmers into deeper crises.
- The PPVFRA was enacted in 2001 after engaging debates were held in the country for more than a decade as to how intellectual property rights should be introduced in Indian agriculture after the country joined the World Trade Organisation in 1995 and agreed to implement the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).
- The choice before India was to either enact a law that protected the interests of farming communities, or to accept the framework of plant breeders' rights given by the International Union for Protection of New Plant Varieties (better known by its French acronym, UPOV Convention).

- The latter option was rejected primarily because the current version of UPOV, which was adopted in 1991 (UPOV '91), denies the farmers the freedom to re-use farm saved seeds and to exchange them with their neighbours.

Indian version:

- Therefore, in the PPVFRA, India introduced a chapter on Farmers' Rights, which has three legs: one, farmers are recognised as plant breeders and they can register their varieties; two, farmers engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation are recognised and rewarded; and, three, protecting the traditional practices of the farmers of saving seeds from one harvest and using the saved seeds either for sowing for their next harvest or sharing them with their farm neighbours.
- **Article 39(1)(iv)**, which sanctifies the last-mentioned rights, states that farmers are "entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act" (emphasis added).

Issues that PepsiCo's law suit raises:

- **PepsiCo's law suit against the farmers raised a number of critical issues, which the court appeared to have glossed over in its proceedings.**
- **The first issue is that planting a registered variety by the farmers is per se not an offence since the Act allows the farmers to re-use such varieties and to also share them with their neighbours, provided two conditions are met.**
- The first is that the farmers cannot sell "branded" seeds, which, according to PPVFRA, means "any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected" under the Act. The company claimed before the court that FC-5 was licensed to farmers "firstly (emphasis added) in Punjab to bring potatoes of the said variety on the buyback system".
- The FC-5 variety could have been made available and distributed anywhere, and without the law being violated.
- The second issue is that FC-5 has been registered as an "Extant Variety", which is also a "Variety of Common Knowledge".
- This, in other words, implies that the said variety of potato was already available in the country before it was registered and that there was "common knowledge" about this variety in the country. It may, therefore, be assumed that PepsiCo's variety would surely have been produced in the country before it was registered.
- Further, from the order of the judge on April 8, 2019, in PepsiCo India Holdings Pvt. Ltd. versus Bipin Patel, it can be gleaned that the company may have given incorrect information that FC-5 is a "new" variety instead of an "extant" variety.

- It is important to note that registration of extant varieties was allowed in the PPVFRA despite opposition from several experts, and the justification used was that farmers' varieties can be registered under this provision.
- The benefits that the farmers are deriving are not clear, but what can easily be understood is that companies like PepsiCo that got the opportunity to register their older varieties can now sue the farmers for using known plant varieties.

Private investigation

- A third issue that arises relates to the alleged modus operandi of PepsiCo.
- There are reports that the company employed a private intelligence agency to collect samples from the farmers' fields.
- This reported surveillance was the exact copy of the infamous 1998 case, in which Monsanto had sued a Canadian farmer, Percy Schmeiser, and claimed that the latter was illegally using its genetically modified canola.
- Monsanto had reportedly engaged private investigators to raid his field and to collect samples, an act that drew global condemnation. Percy became the icon of the global resistance by farmers against commercial plant breeders, because of which Monsanto was not able to secure damages from him.

Editorial Analysis:

- When the news broke that PepsiCo was suing small farmers in India for growing a potato variety that is used in its Lay's chips, popular sympathies immediately went, of course, to the farmers.
- National and international pressure swiftly mounted, and PepsiCo backtracked, announcing its withdrawal of the lawsuit.

Proprietary Seeds:

- Experts point out that **what should not be a source of pride, however, is the fact that so many small farmers are, like the ones targeted by PepsiCo, reliant, directly or indirectly, on proprietary seeds.**
- Typically these proprietary seeds are grown in high input (fertilizer-pesticide-irrigation) environments that, over time, erode local biodiversity.
- Between the expense of buying these seeds and inputs, and the loss of the skills and social relationships needed to do otherwise (through the saving and exchange of seeds of indigenous varieties), **small-scale farming looks set to continue on its downward spiral of lower income, status and dignity.**

Time for a paradigm shift?

- No one can blame farmers for thinking that proprietary seeds are better.
- As a matter of fact, since the days of the Green Revolution, agricultural extension officers — the field representatives of agricultural modernity — have taught farmers to buy ever-higher-yielding seeds.
- **Taking this science-and-industry-know-best stance on seed quality a little further, efforts have been ongoing, albeit unsuccessfully due to pressures**

from farmers and NGOs, to pass a new seed law in India permitting the sale of certified seeds only.

- In the current Indian law regulating intellectual property rights in seeds, the Plant Variety Protection law, this same official preference for the proprietary takes a different form.

What does the Plant Variety Protection law permit?

- The law permits farmers not only to save and resow (multiply) seeds, but also to sell them to other farmers, no matter what the original source of the seeds is.
- This broad permission (called farmers' privilege) is considered indispensable for so-called seed sovereignty, which has become synonymous with permitting farmers to save, sow, multiply and use proprietary seeds, as well as proprietary vegetative propagation materials such as what are used for the cultivation of potatoes.
- It is important to note that despite the shift away from seed replacement to the right to save seeds, the emphasis remains on proprietary seeds that have narrow, uniform and non-variable genetic builds.
- **Where farmers could be using genetically distinctive seeds adapted to local conditions and farming traditions, they are instead adapting local conditions and traditions in order to use genetically standardised seeds, to ruinous effect.**
- It is time for a paradigm shift.

An International Perspective:

- To get a sense of what can be done, it may be useful to take a peep into recent regulatory efforts in Europe.
- **The EU Regulation on Organic Production and Labelling of Organic Products**, adopted in 2018, for the first time permits and encourages, inter alia, the use and marketing for organic agriculture, of "plant reproductive material of organic heterogenous material" without having to comply with most of the arduous registration and certification requirements under various EU laws.
- Heterogenous materials, unlike current proprietary seeds, need not be uniform or stable. Indeed, the regulation clearly acknowledges based on "Research in the Union on plant reproductive material that does not fulfil the variety definition… that there could be benefits of using such diverse material… to reduce the spread of diseases, to improve resilience and to increase biodiversity."
- Accordingly, the regulation removes the legal bar on marketing of "heterogenous materials" and encourages its sale for organic agriculture, thus clearing the way to much more expansive use of indigenous varieties.
- **Experts opine that once the delegated acts under the EU regulation are formulated, they will support the creation of markets, especially markets and marketplaces facilitating trade of heterogenous seeds, including by**

small farmers who are currently the most active in maintaining and improving such seeds in situ.

- As a matter of fact, multimillion-Euro research and innovation projects being invited and funded by the EU already aim to make this diversity a more integral part of farming in Europe. And here they are talking only of the diversity within Europe.

Some Important Questions and Solutions:

- How can a biodiversity-rich nation like India shift its agriculture from a high-yield ideal to a high-value one, where the 'values' include striving to minimise environmental harm while maximising nutritional gains and farmer welfare?
- Firstly, **small farmers must be educated and encouraged with proper incentive structures**, to engage with agriculture that conserves and improves traditional/desi (heterogenous) seeds in situ, rather than with "improved", proprietary varieties.

Currently, in the garb of protecting this diversity against biopiracy, India is preventing its effective use, management and monetisation for the benefit of its farmers.

- Secondly, **an immutable record-keeping system, perhaps blockchain or DLT, is needed to break the link between the profitable and the proprietary.**

Such a system would allow India and its rural communities to keep proper track of where and how their seeds/propagation materials and the genetic resources contained therein are being transferred and traded. **It would also ensure, through smart-contract facilitated micropayments, that monetary returns come in from users and buyers of these seeds, from around the globe.**
These monetary returns would effectively incentivise continuous cultivation and improvement of indigenous seeds on the one hand, and ensure sustainable growth of agriculture and of rural communities on the other.

- Thirdly, and as a key pre-requisite to the execution of the first two plans, **India's invaluable traditional ecological knowledge systems need to be revived and made a part of mainstream agricultural research, education and extension services.**

Know-how contained in ancient Indian treatises like the **Vrikshayurveda** and the **Krishi Parashar** falls within the scope of what international conventions such as the Convention on Biological Diversity refer to as **'indigenous and traditional technologies'**.
The revival of these technologies is central to promoting sustainable 'high value' agriculture, not least because of the growing global demand for organic and Ayurvedic products.

Concluding Remarks:

- The withdrawal of the lawsuit by PepsiCo may be a welcome relief to several farmers who can neither afford to defend themselves in court, nor to abandon the cultivation of proprietary varieties.
- It must, however, be a wake-up call to the government and policymakers who need to do much more to secure sustainable rural societies, protect soil health and promote seed sovereignty for the economic development of Indian farmers and of the entire nation.

Thank you!