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Helping enforcement catch up with environmental laws

- When Pakistani customs officers last year seized massive amounts of R-22 refrigerant—a powerful ozone-depleting substance and greenhouse gas—it showed how strong enforcement of environmental laws can make a real difference to protecting the planet.
- In the largest seizure of its kind for Pakistan, customs authorities confiscated 18,000 kilograms of the refrigerant at Karachi Port in October 2018. The bust came when a customs officer, Rahmatullah Vistro, received a tip about the smuggling plans.
- Vistro is one of many customs officers around the world who have received UN Environment training to identify ozone-depleting substances smuggled by methods such as misdeclaration and mislabelling—as was the case with this shipment.
- Countries are phasing out hydrochlorofluorocarbons like R-22 under the Montreal Protocol, the treaty that protects the ozone layer. According to the latest Scientific Assessment of Ozone Depletion, stratospheric ozone has been recovering at a rate of 1 to 3 per cent per decade since 2000, thanks to actions taken under the Montreal Protocol.
- R-22's destructive impacts on the ozone layer are compounded by its huge global warming potential—over 1,800 times that of carbon dioxide. The greenhouse gas emissions from this shipment would have been equivalent to burning over 132,000,000 kilograms of coal.
- Even so, demand for controlled substances is still high in some places where alternatives are expensive or don't work as well at extremely high temperatures. The illegal trade in ozone depleting substances is worth almost US$70 million per year, according to the latest estimates.

- Such successes show that enforcement of environmental laws is possible, even if it is not yet the norm. UN Environment's first-ever global assessment of environmental rule of law, the result of exhaustive research throughout 2018, found weak enforcement to be a global trend that is exacerbating environmental threats, despite a 38-fold increase in environmental laws since 1972.
- Strong institutions can enforce environmental laws and ensure more effective management of natural resources. UN Environment works with countries to strengthen enforcement and compliance by promoting a rights-based approach to environmental management and by strengthening capacities to enforce legislation and combat violations.
- UN Environment works to build public support for the fight against environmental crime, thus encouraging governments and authorities to crack down through the laws already in place.
- For example, the Wild for Life campaign has mobilized millions of people in the fight against wildlife trafficking since its launch in May 2016. In 2018, the campaign's advocacy helped bring greater protection for the snow leopard when the Government of Mongolia revoked mining licenses in Tost Nature Reserve.
- UN Environment and partners also encourage further action through recognizing and awarding those who enforce laws.
- For example, when a Thai court in 2018 sentenced wildlife kingpin Boonchai Bach, a 41-year-old Thai-Vietnamese national, to two years in prison for smuggling 11 kilograms of rhino horn, worth US$700,000, it was a major coup worthy of recognition.
- The team that delivered the evidence—the Thai Customs, the Royal Thai Police, and the Department of National Parks, Wildlife and Plant Conservation—received one of the Asia Environmental Enforcement Awards 2018 for their work.

About Montreal Protocol

BACKGROUND

- The Montreal Protocol, finalized in 1987, is a global agreement to protect the stratospheric ozone layer by phasing out the production and consumption of ozone-depleting substances (ODS).

- The stratospheric ozone layer filters out harmful ultraviolet radiation, which is associated with an increased prevalence of skin cancer and cataracts, reduced agricultural productivity, and disruption of marine ecosystems.
- The United States ratified the Montreal Protocol in 1988 and has joined four subsequent amendments.
- The United States has been a leader within the Protocol throughout its existence, and has taken strong domestic action to phase out the production and consumption of ODS such as chlorofluorocarbons (CFCs) and halons.
- The Montreal Protocol has proven to be innovative and successful, and is the first treaty to achieve universal ratification by all countries in the world.
- Leveraging worldwide participation, the Montreal Protocol has sent clear signals to the global market and placed the ozone layer, which was in peril, on a path to repair.

Kigali Agreement

- It is a legally binding agreement between the signatory parties with non-compliance measures.
- It will come into effect from 1st January 2019 provided it is ratified by at least 20 member parties by then.
- It has shown a considerable flexibility in approach while setting phase-down targets for different economies accommodating their developmental aspirations, different socio-economic compulsions, and scientific & technological capabilities.
- It has divided the signatory parties into three groups-
- The first group consists of rich and developed economies like USA, UK and EU countries who will start to phase down HFCs by 2019 and reduce it to 15% of 2012 levels by 2036.
- The second group consists of emerging economies like China, Brazil as well as some African countries who will start phase down by 2024 and reduce it to 20% of 2021 levels by 2045.
- The third group consists of developing economies and some of the hottest climatic countries like India, Pakistan, Iran, Saudi Arabia who will start phasing down HFCs by 2028 and reduce it to 15% of 2024-2026 levels till 2047.

Why is NASA returning astronauts to Moon?

NASA and the US government are closely working to return the astronauts to Moon by 2024.

Key takeaways from NASA's press release:

- NASA is charged to get American astronauts to the moon in the next five years
- We are tasked with landing on the moon's South Pole by 2024
- Stay on schedule for flying Exploration Mission-1 with Orion on the Space Launch System (SLS) rocket next year, and for sending the first crewed mission to the lunar vicinity by 2022
- NASA will continue to 'use all means necessary' to ensure mission success in moving us forward to the moon.

So, it is now the official policy of the US to return astronauts to the surface of the Moon by 2024, the vice president stressed, invoking a 21st-century space race with China and Russia.

Vice President Mike Pence announced that the US plans to land astronauts on the Moon within the next five years, the media reported.

Electoral bonds will affect transparency

Why in news?

The Election Commission of India (ECI) has told the Supreme Court that electoral bonds, contrary to government claims, wreck transparency in political funding.

EC's Observations:

- Coupled with the removal of cap on foreign funding, they invite foreign corporate powers to impact Indian politics.
- The ECI ripped apart amendments made to various key statutes through the two consecutive Finance Acts of 2016 and 2017.
- It said these amendments would pump in black money for political funding through shell companies and allow unchecked foreign funding of political parties in India which could lead to Indian politics being influenced by foreign companies.
- The poll body said it had, way back in May 2017, warned the Ministry of Law and Justice that these amendments will have serious repercussions/impact on the transparency of political finance/funding of political parties.
- It annexed the letters written to the Law Ministry, along with its 37-page affidavit filed in the Supreme Court on March 25, 2019.
- The Election Commission of India has time and again voiced the importance of declaration of donations received by political parties and also about the manner in which those funds are expended by them for better transparency and accountability in the election process.
- It said the amendments virtually derailed ECI guidelines of August 29, 2014, requiring parties to file reports on contributions received.

Parties can skip record of donations

Why in news?

In its affidavit submitted in the Supreme Court, the Election Commission of India pointed to the amendments made to key laws, with dangerous consequences.

Controversial Amendments:

- The Finance Act of 2017 amends various laws, including the

Representation of the People (RP) Act of 1951, the Income Tax Act and the Companies Act.

- The Finance Act of 2016 makes changes in the Foreign Contribution (Regulation) Act of 2010.
- The **amendment to the RP Act allows political parties to skip recording donations received by them through electoral bonds** in their contribution reports to the ECI.
- This is a retrograde step as far as transparency of donations is concerned, the ECI said.
- The poll commission has no way to ascertain whether the donations were received legally by the political party from government companies or foreign sources.
- On the other hand, a government affidavit on March 14, 2019 in the apex court claimed that electoral bonds were introduced to promote transparency in political funding and donations.
- The government had described the electoral bonds scheme, introduced on January 2 last year, as an "electoral reform" in a country moving towards a "cashless-digital economy.

Anonymous Donations:

- The ECI said the amendment introduced by the government in the Income Tax Act allows anonymous donations.
- Donors to political parties **need not provide their names, address or PAN if they have contributed less than Rs. 20,000.**
- Now, many political parties have been reporting a major portion of the donations received as being less than the prescribed limit of Rs. 20,000, the ECI affidavit told the Supreme Court.
- The ECI extends its critique to the Finance Act of 2016, highlighting how it had amended the **FCRA 2010 to allow donations to be received from foreign companies having majority stake in Indian companies**.
- The affidavit extensively quotes from the May 26, 2017 letter the ECI wrote to the Ministry of Law.
- The letter, annexed with the affidavit, mentions how the amendment in the Companies Act opens up the possibility of shell companies being set up for the sole purpose of making donations to political parties.
- The Supreme Court has listed the case for hearing on April 2. The

hearing is based on a petition filed by Association of Democratic Reforms on the issue of electoral bonds.

Successful anti-satellite missile test puts India in elite club

Why in news?

In an incremental advance, India has successfully conducted an **Anti-Satellite (ASAT**) missile test, named **Mission Shakti**, becoming the fourth country in the world to demonstrate the capability to shoot down satellites in orbit. So far, only the United States, Russia and China have this prowess.

About the Mission:

- A short while back, our scientists have shot down a live satellite in the Low Earth Orbit (LEO) at 300 km in space,Prime Minister Narendra Modi said, addressing the nation around noon.
- The satellite downed by the ASAT missile **was Microsat-R**, an imaging satellite which was launched into orbit on January 24, 2019 using a Polar Satellite Launch Vehicle (PSLV).
- India has built the broad capabilities and building blocks to develop ASAT missiles for some time as part of its Ballistic Missile Defence (BMD) programme.
- PM said the aim of the test was to maintain peace, rather than war mongering.
- A BMD interceptor missile successfully engaged an Indian orbiting target satellite in LEO in a 'hit to kill' mode'.
- A DRDO official claimed that the **ASAT missile was a modified exo-atmospheric interceptor missile of the BMD.**
- A LEO of 300 km was chosen to "minimise" debris and it also won't last more than a few months.
- Anti-satellite weapons provide the **capability to shoot down enemy satellites in orbit** thereby disrupting critical communications and

surveillance capabilities.
- ASAT missiles also act as **a space deterrent** in dissuading adversaries from targeting the country's satellite network.

India reassures global community after test:

- India assured the world that it did not violate any international treaty or understanding with the anti-satellite (A-SAT) missile testing.
- The Ministry of External Affairs (MEA) said India believes in peaceful use of the common outer space that belongs to humanity.
- The Ministry said the A-SAT test was not directed against any country and that India plans to play a role in future in drafting global laws on prevention of arms race in outer space.
- MEA reiterated India's support of **Prevention of an Arms Race in Outer Space** (PAROS) in the Conference on Disarmament "where it has been on the agenda since 1982.

Anti-sat weapons date back to Cold War:

- Anti-satellite weapon systems have a long history and were a product of the Cold War hostilities between the United States and the Soviet Union.
- However never have countries claimed credit for shooting down their satellites to test their ATS.
- India has made a departure.

What are anti-satellite (ASAT) weapons?

- They are missile-based systems to attack moving satellites.
- So far, the United States, China and Russia were the only ones who've reported the **ability to shoot down** space objects from ground or airborne sources.
- Anti-satellite weapons came back into popular currency after China conducted an anti-satellite missile test on January 11, 2007.
- The target was a Chinese weather satellite the FY-1C that sailed at an altitude of 865 km. (537 mi).
- A year later, the United States launched '**Operation Burnt Frost**,' the code name to intercept and destroy a non-functioning U.S. National Reconnaissance Office (NRO) satellite named USA-193.

What are India's capabilities so far?

- India's ASAT development has a long history with Dr. V.K. Saraswat, Director-General of the Defence Research and Development Organisation stating in 2012 that India had "all the building blocks necessary" to integrate an anti-satellite weapon to neutralise hostile satellites in low earth and polar orbits.
- However, there was never any formal announcement of such a mission.

What's new about India's ASAT system?

- While **Mission Shakti** may have targeted an object in outer space, India has long developed the ability to intercept incoming missiles.
- In 2011, a **modified Prithvi missile**, mimicked the trajectory of a ballistic missile with a 600-km range.
- Radars at different locations swung into action, tracking the "enemy" missile, constructing its trajectory and passing on the information in real time to the Mission Control Centre (MCC) to launch the interceptor, an **Advanced Air Defence (AAD) missile.**
- It had a directional warhead to go close to the adversarial missile before exploding to inflict damage on it.

What are low earth orbit satellites?

- The Indian satellite that was shot down was a Low Earth Orbit (LEO) satellite.
- These are satellites roughly at an **altitude of 2,000 kilometres from the earth** and that's the region where the majority of satellites are concentrated.
- A database from the Union of Concerned Scientists, a non-government organisation based in the United States, says that there are at least 5 known Indian satellites in LEO: India PiSat, Resourcesat 2, Radar Imaging Satellites 1and2 and SRMsat.

In 2018, Official Secrets Act invoked in 5 cases

Why in news?

The Ministry of Home Affairs (MHA) issued five prosecution sanction orders last year under the Official Secrets Act (OSA), 1923.

Cases involved:

- On October 8, Nishant Agrawal, an engineer working at the BrahMos Aerospace Private Limited centre in Nagpur, was arrested on charges of illegally possessing highly sensitive and secret documents, the Uttar Pradesh police alleged.
- The police recently filed a complaint (technical term for changeset under OSA) in a Nagpur court against the accused but did not press any charges under the British-era Act for sending the sensitive information to Pakistan, a claim widely reported in media.
- The Nagpur court also sought legal advice on the complaint.

Rafale Deal Case:

- Remarks made by the Attorney-General in the Supreme Court on March 6, of looking into "criminal action" against those responsible for making "stolen documents" on the Rafale deal public, have brought the Official Secrets Act into focus.
- The colonial-era law meant for **ensuring secrecy and confidentiality in governance, mostly on national security and espionage issues,** has often been cited by authorities for refusing to divulge information.
- Governments have also faced criticism for misusing the law against journalists and whistleblowers.

What is the Act about?

- The Official Secrets Act was first enacted in 1923 and was retained after Independence.
- The law, **applicable to government servants and citizens**, provides the framework for dealing with espionage, sedition, and other potential threats to the integrity of the nation.
- The law makes spying, sharing 'secret' information, unauthorised use of uniforms, withholding information, interference with the armed forces in prohibited/restricted areas, among others, punishable offences.

- If guilty, a person may get up to 14 years' imprisonment, a fine, or both.
- The information could be any reference to a place belonging to or occupied by the government, documents, photographs, sketches, maps, plans, models, official codes or passwords.

Has the law undergone any changes over the years?

- No. However, the Second Administrative Reforms Commission (SARC) Report, 2006, suggested that the **Act should be substituted by a chapter in the National Security Act** that incorporates the necessary provisions.
- The reason: it had become a contentious issue after the implementation of the Right to Information Act.
- The **OSA does not define "secret" or "official secrets"**. Public servants could deny any information terming it a "secret" when asked under the RTI Act.
- The SARC report stated that as the OSA's background is the colonial climate of mistrust of people and the primacy of public officials in dealing with the citizens, it created a culture of secrecy.
- Confidentiality became the norm and disclosure the exception, SARC observed. This tendency was challenged when the Right to Information Act came into existence.
- In 2008, during the first term of the UPA, the Group of Ministers that scrutinised the SARC report refused to repeal the Act but suggested amendments to do away with ambiguities.
- In 2015, the NDA government formed a high-level panel to look into the provisions of the OSA in the light of the RTI Act. No action has been taken on the panel's report, which was submitted in 2017.

Is withholding information the only issue with the Act?

- Another contentious issue with the law is that its **Section 5, which deals with potential breaches of national security, is often misinterpreted.**
- The Section makes it a punishable offence to share information that may help an enemy state.
- The Section comes in handy for booking journalists when they publicise information that may cause embarrassment to the government or the armed forces.

- Journalist Tarakant Dwivedi alias Akela was booked for criminal trespass under the Official Secrets Act on May 17, 2011, 11 months after he wrote an article in Mid-Day about how sophisticated weapons bought after 26/11 were being stored in a room with a leaking roof at the Chhatrapati Shivaji Terminus in Mumbai.
- An RTI query later revealed that the armoury Akela visited was not a prohibited area and the Bombay High Court subsequently dismissed the case.
- Kashmir-based journalist Iftikhar Gilani was arrested in 2002 under the OSA for downloading a document from the Internet. After spending seven months in jail, he was honourably discharged by the courts.
- In a case pertaining to journalist Santanu Saikia, who wrote an article in Financial Express on the basis of a leaked Cabinet note, the Delhi High Court in 2009 ruled that publishing a document merely labelled as "secret" shall not render the journalist liable under the OSA.

Do other nations have similar laws?

- Several countries, including the United Kingdom, Malaysia, Singapore, and New Zealand, continue to use the legislation to protect state secrets.
- In 2001, Canada replaced its OSA with a Security of Information Act. The "official secrets" come under the Espionage Act in the U.S.
- On September 3, 2018, a Myanmar court awarded seven years' jail to two Reuters journalists for illegally possessing official documents on the military's alleged human rights abuses against Rohingya Muslims.
- Malaysia has also been accused of using the OSA to silence dissidence.

SC for as few tribunals as possible

What is the issue?

Chief Justice of India Ranjan Gogoi said the numerous tribunals, once meant to lighten the burden of high courts across the country, have now become virtually non-functional, crippled by a chronic lack of

infrastructure, manpower and an irregular appointment mechanism.Heading a Constitution Bench, Chief Justice Gogoi said a "practical solution" would be to have "as few tribunals as possible.

Genesis:

- The 42nd amendment brought a huge change in the adjudication process of the country by introducing Article 323 A and 323 B in the Constitution of India.
- The legislative competence to establish administrative tribunals is conferred through Article 323A and Article 323B to Parliament and state legislatures respectively.
- The 44th amendment removed all the changes brought by 42nd amendment however, Article 323 A and Article 323 B stayed.
- It appears prima facie that through these amendments, the Parliament intended to transfer the judicial power from Judiciary to bodies which can be easily controlled by the legislature.
- The amendment allowed the Parliament to form laws which will provide for authority, jurisdiction and mode of operation of these tribunals and it also allowed for exclusion of jurisdiction of High Courts and civil courts except the Jurisdiction of Supreme Court under Article 136.
- At this juncture, two important issues arise, firstly, whether tribunalisation hits the basic structure by violating the principal of separation of powers and independence of judiciary and secondly, whether the constitution allows for the transfer of judicial power.

Issues:

- The Bench is hearing a batch of petitions, led by the Madras Bar Association, challenging the amendments in the Finance Act, 2017 which have modified the terms of appointment and functioning in various key statutory tribunals, including the National Green Tribunal (NGT). The petitioners allege that the amendments amount to **dilution of judicial independence and a threat to the Constitution**.
- But the court pointed to how the tribunals are themselves fading into obscurity. Chief Justice Gogoi said the National Company Law Tribunal wants branches all over the country.

- The selection committee recommends names for appointment as members, but there is hardly any appointment done.
- The CJI said, in the past, the selection committee to NCLT and the NCLAT headed by him had recommended over 20 names, but only three or four were appointed.
- There is no reason assigned for turning down recommendations of the selection committee.
- The CJI said the Centre should make it clear whether it wanted the tribunals to continue or not.
- The Bench pointed out how retired judges cannot be made to wait endlessly for a slot in the tribunals.
- Besides there is a view that post-retirement appointments for judges is a scar on the independence of the judiciary.

Rampant tribunalisation: Threatening High Court's Jurisdiction:

- Parliament has inflicted damage on high courts with rampant tribunalisation.
- Tribunals have replaced high courts for disputes under the Companies Act, Competition Act, SEBI Act, Electricity Act, Consumer Protection Act among others.
- Any person aggrieved by an order of an appellate tribunal can directly appeal to the Supreme Court, side-stepping the high court.
- This raises three institutional concerns
- First, these tribunals do not enjoy the same constitutional protection as high courts.
- The appointment process and service conditions of high court judges are not under the control of the executive.
- The enormous institutional investment to protect the independence of high courts is dispensed with when it comes to tribunals.
- Many tribunals still owe allegiance to their parent ministries.
- Tribunals are also not as accessible as high courts. For example, there are just four benches of the Green Tribunal for the whole country.
- In comparison, high courts were easily accessible for environmental matters.
- A shareholder in Kerala or the Northeast would have to travel to the Securities Appellate Tribunal in Mumbai to challenge any order by

the Securities and Exchange Board of India.

- This makes justice expensive and difficult to access. Further, when retired high court judges invariably preside over every tribunal, the justification of expert adjudication by tribunals disappears.
- Second, conferring a direct right of appeal to the Supreme Court from tribunals has changed the Supreme Court from being a constitutional court to a mere appellate court. It has become a final clearing house for every appeal under every statute.
- The Supreme Court should be a court of last resort deciding cases of the moment, and not a final forum with an all-embracing jurisdiction over disputes ranging from a custody battle to the scope of a municipal by-law.

India in pact to ease U.S. firms' compliance

Why in news?

India and the U.S. signed an inter-government agreement for the **automatic exchange of country-by-country (CbC) reports**, which will reduce the compliance burden for Indian subsidiary companies of U.S. parent companies.

About the Agreement:

- This is a key step in making India compliant with the Base Erosion and Profit Shifting (BEPS) project, of which it is an active participant.
- This Agreement for Exchange of CbC Reports, along with the **Bilateral Competent Authority Arrangement** between the two competent authorities, will enable both the countries to automatically exchange CbC reports filed by the ultimate parent entities of multinational enterprises (MNE) in the respective jurisdictions, pertaining to the years commencing on or after January 1, 2016.

What is BEPS?

- Base erosion and profit shifting refers to the activities of multinational corporations to shift their profits from high tax jurisdictions to lower tax jurisdiction, thereby eroding the tax base of the high tax jurisdictions and depriving them of tax revenue.
- In order to combat this, many countries entered into agreements to share tax information with each other to enhance transparency and make such profit shifting that much harder.

Concerns with BEPS:

- There have been concerns across the globe about companies making profits in a particular country but not paying taxes to the local government.
- The Organization for Economic Cooperation and Development (OECD) states that BEPS is of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises.
- It also states that estimates since 2013 conservatively indicate annual losses of anywhere from 4 to10 per cent of global corporate income tax revenues, or $100-$240 billion annually.
- The OECD, under the authority of the Group of 20 countries, has considered ways to revise tax treaties, tighten rules, and to share more government tax information under **the BEPS project**, and has issued action plans. One of the areas discussed was on addressing tax challenges in the digital economy.

Equalisation Levy:

- The term sprang into the public consciousness because the 2016 Union Budget announced an **'equalisation levy' of 6 per cent on payments exceeding over Rs 1 lakh to online ad services from non-resident entities**.
- Prominent among the companies affected would be new economy multinationals with Indian subsidiaries, like Facebook and Google.
- **India is the first country to impose such a levy, post the OECD**

action plan.

- A tax panel has recommended expanding the ambit of this levy to cover a wide gamut of transactions including online marketing, cloud computing, website designing, hosting and maintenance, platforms for sale of goods and services, and online use of or download of software and applications.

BEPS Action Plan:

- The Base Erosion and Profit **Shifting (BEPS) Action Plan adopted by the Organisation for Economic Co-operation and Development (OECD) and G20 countries in 2013** recognised that the way forward to mitigate risk from base erosion and profit shifting was to enhance transparency.
- Against this background, a template was released in 2014, which outlined how MNEs could report the required information for each tax jurisdiction in which they do business. These are called the country-by-country reports.
- MNEs are also required to identify each entity within the group doing business in a particular tax jurisdiction, and to provide information about the business activities each entity conducts.
- This information is to be made available to the tax authorities in all jurisdictions in which the MNE operates.
- This was seen as placing a huge compliance burden on the subsidiary companies of these MNEs.
- It is a inter-governmental agreement that would also obviate the need for Indian subsidiary companies of U.S. MNEs to do local filing of the CbC reports, thereby reducing the compliance burden.
- It's a huge respite for subsidiaries of U.S. head-quartered companies. The signing of the agreement further revalidates the keen willingness of Indian and U.S. tax authorities to engage and amicably resolve issues for taxpayers.

SEBI exempts govt. from open offer for PNB

Why in news?

SEBI onexempted the government from making an open offer for the shareholders of Punjab National Bank (PNB) but directed reduction in non-public shareholding in the lender post capital infusion.

Open offer requirement:

- In February, PNB filed an application on behalf of the Centre seeking exemption from open offer requirement under takeover regulations. After capital infusion, the government's stake in PNB would rise by 5.19% to 75.41%.
- Under SEBI norms, entities are required to make an open offer if their shareholding goes beyond a certain threshold.
- Against this backdrop the bank sought SEBI's exemption from the open offer requirement for the government.
- According to SEBI, there would be no change in control of the bank pursuant to the proposed acquisition as the change would only be in the quantum of shares held by the government.
