DAILY CURRENT AFFAIRS

28th AUGUST, 2024

TATHASTUICS

S.NO.	TOPIC
1.	UNITED PENSION SCHEME
2.	SECTION (45) — PMLA, 2002 (VULNERABLE WOMEN)

UNITED PENSION SCHEME

HOW DOES IT DIFFER FROM THE OLD AND NEW PENSION SCHEME?

1. **Prelims:** Economic and Social Development-Sustainable Development, Poverty, Inclusion, Demographics, Social Sector Initiatives, etc.
2. **Mains: General Studies II:** Welfare schemes for vulnerable sections of the population by the Centre and States and the performance of these schemes; mechanisms, laws, institutions and Bodies constituted for the protection and betterment of these vulnerable sections.

PENSION: A fixed retirement fund for an employee paid as a regular income at regular intervals during post-retirement years.

NEWS

- The Indian government unveiled the Unified Pension Scheme (UPS) on August 24, 2024, fulfilling a long-standing demand of government unions.
- The UPS promises government employees half of their last drawn salary as a lifelong monthly pension, with additional features like inflation-linked dearness relief and a minimum pension of ₹10,000 per month.

↓
for pensioners with at least 10 years of government service

BACKGROUND

savings scheme
{employees save a portion of their salary}

Old Pension Scheme (OPS):

- Introduced under the Pensions Act of 1871 during British rule, OPS provided a 'Defined Benefit' where retirees received 50% of their last drawn basic salary as a pension.
- It also included a Dearness Allowance (DA) and the option for a General Provident Fund. ↓ to offset impact of inflation
- The OPS was funded through budgetary allocations and did not require employees to contribute.Several states have reverted to OPS, including Rajasthan, Chhattisgarh, Jharkhand, Punjab, and Himachal Pradesh.) NPS in Dec 2023 to OPS

→ Pre-determined [fixed amount {calculated using the formula that considers employee's salary and years of service] ve paid with interest when retired
→ Employer Responsibility (no contributions from employees]

However, this pension was unfunded

↓

there was no corpus like (the Contingency Fund of India) from which the pension was drawn.

Hence, employees had no deductions from their salaries for contributing to a pension fund.

↳ Govt. made budgetary allocations & pay-as-you-go ↘ funds drawn from the government's income (taxes)

These contributions → invested in a range of financial instruments & Gsec, equities, corporate bonds → employees have a choice (risk borne by employee)

BACKGROUND

New Pension Scheme (NPS):

- Introduced on January 14, 2004, to manage the increasing pension liabilities, NPS is based on a 'Defined Contribution' concept.
- Employees contribute 10% of their basic pay and DA, matched by the government.
- NPS mandates that 40% of the pension is invested in an annuity, which provides a lifetime pension.NPS is regulated by the Pension Fund Regulatory and Development Authority (PFRDA).

↳ Defined Contribution: a type of retirement plan where the amount of pension or benefit depends on the contributions made and the investment returns earned on those contribution.

↳ employees contribution [fixed % age of their salary (10% + DA]
↳ employer contribution [matching / fixed contribution 14% + DA]

Defined Contribution

└ Two-tiered system

employees joined service after the rollout of the scheme did not have option to join OPS and were allotted a unique Permanent Pension Account Number [PPAN]

FIRST TIER
(govt. employee mandatory 10% + DA and govt. would make an equal matching contribution)

SECOND/OPTIONAL TIER
employees could make their own contribution under a separate account whose withdrawal was at employees' discretion

At the time of retirement (60 years)

govt employee has to mandatorily invest 40% of the pension received to purchase an annuity which will provide pension for the lifetime of the employees and his dependents.

if retires before time → mandatory purchase of an annuity → 80%

* All except members of Armed Forces, who joined service on or after Jan 1, 2004 → covered under NPS
* employees prior to that date → option of staying with OPS.

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Under OPS
↳ employee could nominate up to three individuals and allocate the share of pension amount to be received.

NPS {voluntary investment in NPS {who is already covered by mandatory scheme like EPFO}
↳ tax deductible with max. limit of ₹1.5 lakh
↳ 60% can be withdrawn upon retirement is tax-free.
↳ All States except Tamil Nadu and West Bengal have implemented NPS

For lesser service [up to 10 years] ↓% reduced proportionately.

KEY DETAILS - UPS

Similarities to OPS:
- The UPS closely resembles the OPS in guaranteeing 50% of the basic pay drawn in the last year as a pension, with a minimum pension set at ₹10,000. (following at least 25 years of service)
- Includes inflation indexation and a family pension component.
- 60% of pension drawn by employee prior to death awarded as family pension

Differences from OPS and NPS:
- Unlike OPS, UPS is funded, requiring employees to contribute 10% of their salary, with the government contributing 18.5%.
- UPS will have retrospective effect, allowing those who joined after January 1, 2004, and retired under NPS, to opt for UPS.

FISCAL PRUDENCE

Increased Fiscal Burden

- **Government Contribution:** Under the UPS, the government will contribute 18.5% of the employee's salary, compared to the 10% contribution in the New Pension Scheme (NPS). This significant increase in contribution places an additional burden on the government's finances. Union Minister Ashwini Vaishnaw has already estimated an extra ₹6,250 crore per year on the exchequer due to this scheme.
- **Retrospective Effect:** The retrospective application of the UPS to those who joined after January 1, 2004, and retired under the NPS, further amplifies this burden. This backward applicability can lead to unexpected fiscal stress, particularly if a large number of retirees opt for the UPS.

IMPACT ON FISCAL DEFICIT

- **Rising Pension Liabilities:** With the UPS promising a defined benefit similar to the Old Pension Scheme (OPS), pension liabilities are expected to rise significantly. This could worsen the fiscal deficit, particularly if the scheme is adopted by state governments as well.
- **Election-Driven Spending:** The timing of the UPS, ahead of several key state elections, suggests it may be politically motivated rather than economically prudent. Such populist measures, while beneficial in the short term for garnering electoral support, can have long-term negative effects on fiscal discipline.

PERSPECTIVES

- **Long-term Sustainability**
  - **Unfunded Nature of Pensions**: Although the UPS includes a contribution from both employees and the government, it still carries the risk of becoming an unfunded liability over time, especially if actuarial assessments are not conducted rigorously. This could lead to a situation similar to the OPS, where pension payments are made from current revenues without a dedicated pension fund.
  - **Demographic Challenges**: India's demographic transition towards an aging population means that the number of pensioners will increase in the coming decades. Without a robust and sustainable pension system, this could place unsustainable pressure on future governments.
- **Opportunity Cost**
  - **Diversion of Resources**: The significant financial resources allocated to the UPS could potentially divert funds from other critical areas like infrastructure, healthcare, and education. The opportunity cost of this diversion could be substantial, especially in a country with limited fiscal space.
- **Market Implications**
  - **Impact on Financial Markets**: The UPS's shift away from the market-driven NPS to a more defined benefit model could reduce the flow of funds into financial markets. The NPS was designed to promote investments in government securities, equity, and other instruments, contributing to capital market development. A reduction in these flows could have adverse effects on market liquidity and stability.

CONCLUSION AND WAY FORWARD

- The Unified Pension Scheme represents a pivotal change in India's pension landscape, combining the benefits of the Old and New Pension Schemes. It aims to provide financial security to retirees while introducing a sustainable framework that includes employee contributions. The scheme's long-term success will depend on its ability to balance the fiscal responsibilities of the government with the need to ensure adequate retirement benefits for its employees. As the scheme unfolds, its implications for fiscal stability and social welfare will be key areas of focus.

PRACTICE QUESTION - MAINS

Q. Discuss the advantages of the Unified Pension Scheme (UPS) over the New Pension Scheme (NPS) in addressing the challenges faced by government pension systems. How does the UPS aim to balance fiscal prudence with the need for employee financial security? (150 words)

TATHASTU

SECTION (45) — PMLA, 2002 (VULNERABLE WOMEN)

INDIAN EXPRESS

NEWS

perverse → contrary to the accepted or expected standard.

In Kavitha bail, PMLA exception for women, unclear link to crime

APURVA VISHWANATH
NEW DELHI, AUGUST 27

THE Supreme Court on Tuesday granted bail to Bharat Rashtra Samithi (BRS) leader and Telangana MLC K Kavitha in the Central Bureau of Investigation (CBI) and Enforcement Directorate (ED) cases against her in the Delhi excise policy case.

The ruling is yet another blow for the agencies whose high-profile investigation in the case led to the arrest of several opposition leaders, including Delhi Chief Minister Arvind Kejriwal and former Delhi Deputy Chief Minister Manish Sisodia. The SC granted bail to Sisodia on August 9 and will hear Kejriwal's bail plea on September 5.

While a detailed order with the reasons for granting bail to Kavitha is yet to be made public, a Bench comprising Justices B R Gavai and K V Viswanathan made various observations during the hearing that raise questions on the investigation.

EXPLAINED LAW

'Vulnerable' woman

The SC, in granting bail to Kavitha, set aside the Delhi High Court's July 1 order. In particular, the court criticised the HC's observations on whether Kavitha can be considered a "vulnerable" woman under the Prevention of Money Laundering Act (PMLA) for allowing concession in granting bail.

Section 45 of PMLA provides for bail on money laundering charges. This provision, like the stringent bail standard in the Unlawful Activities (Prevention) Act, 1967 (UAPA), puts the onus on the accused to prove that there is no prima facie case against them.

Section 45(1) reads: "No person accused of an offence under this Act shall be released on bail or on his own bond unless (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any of-

Kavitha is among several top political leaders who have been arrested. PTI

fence while on bail."

However, there is a crucial exception to the bail standard. "Provided that a person, who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs," the law says. This exception is similar to exemptions under the Indian Penal Code for women and minors.

On Kavitha, both the Delhi HC and the trial court (in April) held that since she is a "well-educated" woman, she cannot be considered "vulnerable".

The SC said these "perverse observations" in the Delhi HC order had to be remedied since it could lead to a situation where "no educated woman can get bail".

Kavitha's lawyers had argued that the HC did not properly apply a 2023 precedent on defining a vulnerable woman.

In 2023, Delhi HC granted bail to 49-year-old Preeti Chandra, wife of Sanjay Chandra, who was the Director of M/s Unech Group, underlining the exception for women.

The ED, like in Kavitha's case, had made an argument that the accused was not a "household lady". However, the HC said the PMLA or the Constitution does not make a distinction between a household lady, a businesswoman, or a political figure.

"This is to argue what kind of woman is entitled to fall within the proviso to section 45(1) PMLA by creating an ad-hoc discretionary sub-classification of educated women, businesswomen, women belonging to high social strata, within the broader classification of 'woman', an exercise done by the respondent, is misconceived," the court had said.

However, the court added a qualifier that the accused cannot be a "flight risk" or "tamper witnesses" to be eligible for bail.

Tampering with evidence

The ED argued that Kavitha had "tampered with evidence" by formatting her phone when the agency asked her to submit it.

Justice Viswanathan orally observed that changing or formatting phones is common and may not be sufficient to allege tampering with evidence. Oral observations have no legal value on their own, but often indicate what the judges could be thinking.

The ED also argued that it was on Kavitha's insistence that Hyderabad-based businessman Arun Pillai — considered a key conspirator and frontman for Kavitha — retracted his initial statements to the ED that incriminated her. To this, the Bench asked how Kavitha could have influenced someone (Pillai) who was already in ED custody.

Connection with crime

The Bench then asked the ED how Kavitha was linked to the excise scam. Additional Solicitor General S V Raju told the court that apart from statements of the approvers, the ED has access to the call detail record which shows that Kavitha was in touch with some of the accused/approvers.

The ED read out parts of the statement from approver Raghav Magunta, son of TDP MP Magunta Srinivasulu Reddy, in which he refers to Kavitha's alleged involvement.

According to Reddy's statement, the ED said Reddy's first meeting was with Kejriwal, and in that meeting the CM allegedly told him that Kavitha is also interested in the excise policy. The allegation is that after that meeting, Kavitha called Reddy and was in touch with him.

However, the SC, in an oral observation, questioned how the agency could count Reddy as an approver since he was also a witness in the case. It raised questions on how the agency made Reddy an approver, even when he was directly involved in the alleged scam.

SEPTEMBER 4, 2020 → New liquor policy comes into existence based on a report by an expert committee under the chairmanship of the Excise Commissioner.

OCTOBER 13, 2020 → expert committee files a report after putting it it public domain

FEB 5, 2021 → Placed before Delhi Cabinet. On the same day → the cabinet decided to constitute a Group of Ministers headed by Deputy CM Manish Sisodia with Revenue Minister Kailash Gehlot and Health Minister Satyendar Jain

MARCH 22, 2021 → Delhi cabinet accepts the report.

APRIL 15 - 2021 → Delhi Excise Policy 2021-22 gets approved and sent to then Lt. Governor Anil Baijal
(made six observations

MAY 21 2021 → another cabinet meeting takes place

NOVEMBER 5, 2021 → A proposal approved by the Delhi Cabinet to allow retail liquor vends in those areas where the development authority has cleared and given access.

NOVEMBER 17, 2021 → Delhi govt. implements the the Excise policy 2021-22

Delhi divided into zones, each with liquor vends operated by private licensees. (Campaign funding, intermediaries in Financial transactions)

JULY 8-2022 → chief secretary of Delhi reports gross violations and undue benefits been provided to liquor licensee

JULY 22-2022 → Lt. Governor VK Saxena recommends (CBI probe into alleged rule violations and procedural flaws

AUGUST 19, 2022 → CBI raids residence of Manish Sisodia and three other AAP members.

TATHASTUICS

NEWS

- On August 27, 2024, the Supreme Court of India granted bail to K Kavitha, a Telangana MLC and Bharat Rashtra Samithi (BRS) leader, overturning the Delhi High Court's previous denial of bail.
- This ruling is significant as it involves the Prevention of Money Laundering Act (PMLA) and high-profile political figures.

KAVITHA → was a key member of "South Group" that has been accused of paying the AAP alleged kickbacks of ₹100 crore in return of liquor licences in the national capital

no prima facie case → no case against the defendant or that any evidence presented is not strong enough to warrant a trial.

BACKGROUND

- **Legal Framework**
  - **Prevention of Money Laundering Act (PMLA):** Section 45(1) imposes stringent bail conditions for money laundering offenses, requiring the accused to prove there is no prima facie case against them and that they are unlikely to commit further offenses.
  - **Exception Clause:** Provides for bail under specific conditions, including being a woman, minor, or sick/infirm.
- **Previous Court Decisions**
  - **Delhi High Court:** Denied bail to Kavitha, arguing that as a "well-educated" woman, she did not qualify as "vulnerable" under the PMLA.
  - **Supreme Court Ruling:** Criticized the High Court's interpretation and granted bail, setting aside the Delhi HC's order.

MAIN EVENT

- **Supreme Court Ruling**
  - The Supreme Court of India granted bail to K Kavitha, overturning the Delhi High Court's decision.
  - The Court's ruling challenged the restrictive criteria applied by the High Court regarding Kavitha's eligibility for bail under the PMLA's exception clause.

IMPACT

- **On Legal Precedents**
  - **Interpretation of PMLA:** The ruling emphasizes a broader interpretation of who qualifies as "vulnerable" under the PMLA, potentially influencing future cases.
  - **Credibility of Evidence:** Raises questions about the adequacy of evidence required to deny bail, particularly regarding claims of evidence tampering and witness credibility.

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COMPARISON

- **2023 Case of Preeti Chandra:** In a similar case, the Delhi High Court granted bail to Preeti Chandra, reinforcing the view that the PMLA's bail exceptions apply broadly without distinctions based on social status.
- **Kavitha's Case:** Unlike Chandra's case, Kavitha's bail was contentious due to her political position and the nature of the evidence against her.
- **Comparison with Other Acts**
  - **Unlawful Activities (Prevention) Act (UAPA):** Similar stringent bail standards, with exceptions for vulnerable individuals. The ruling The ruling underscores the need for consistent application of these exceptions across different laws.

WAY FORWARD

- **Legal and Judicial Adjustments**
  - **Clarify Bail Standards:** The legal system should aim to clarify and standardize the interpretation of "vulnerable" under the PMLA and similar statutes to avoid inconsistent application. This could involve legislative amendments or judicial guidelines to ensure fairness across different cases.
  - **Revisit Evidence Standards:** There should be a review of how evidence tampering and witness credibility are assessed in bail applications, ensuring that evidence requirements are clear and robust without being overly burdensome.

WAY FORWARD

- **Institutional Reforms**
  - **Strengthen Investigation Procedures:** The Central Bureau of Investigation (CBI) and Enforcement Directorate (ED) may need to refine their investigative strategies to ensure that they meet legal standards and avoid challenges on procedural grounds. This includes maintaining thorough documentation and clear links between accused individuals and alleged crimes.
  - **Training for Law Enforcement:** Enhance training for law enforcement agencies on handling high-profile cases, focusing on the nuances of legal standards for evidence and bail.

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