

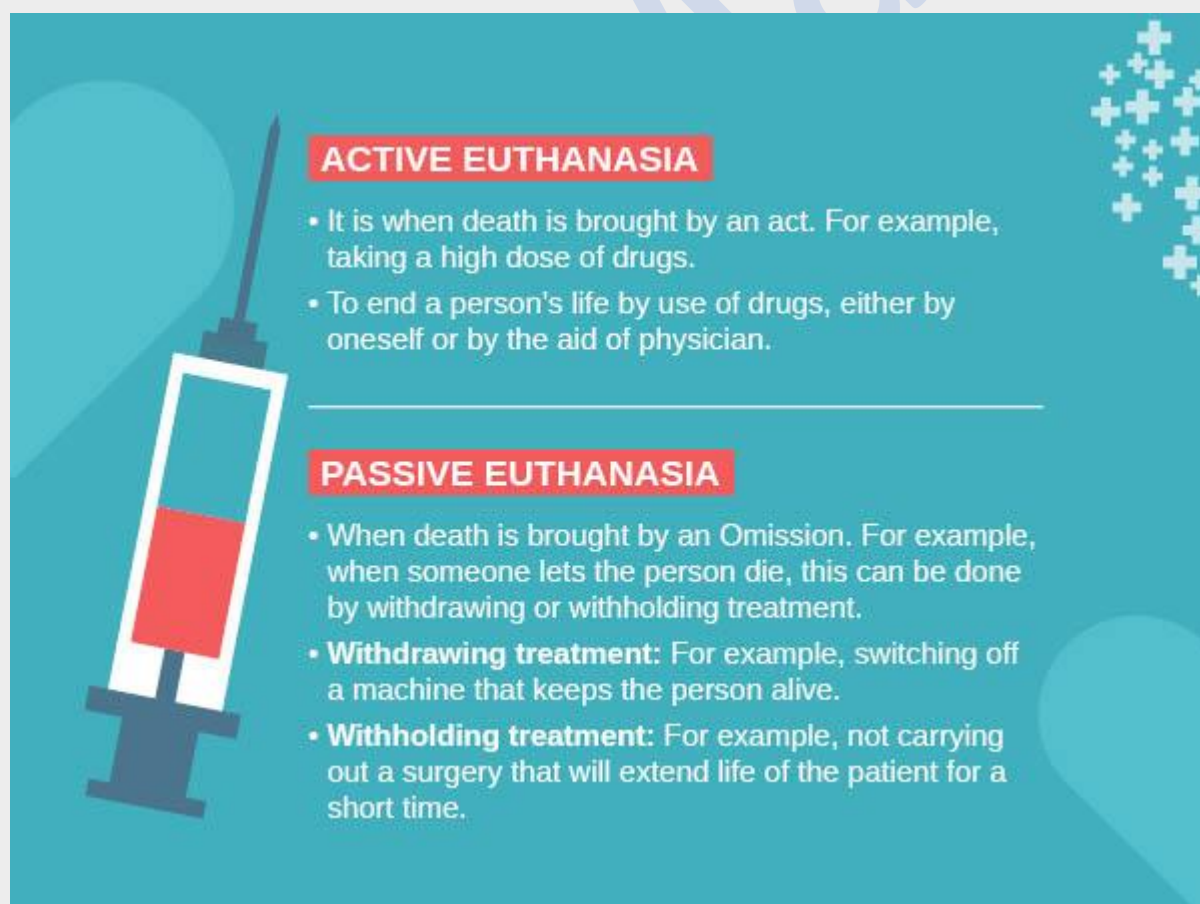
## 'Sharing is Caring'

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**1. The law and the ground realities of passive euthanasia****Introduction**

Finding that 30-year-old Harish Rana was not being kept alive 'mechanically', the Delhi High Court and the Supreme Court recently rejected a plea by his parents for constituting a medical board to examine if this is a viable case for passive euthanasia.

The case has reignited the debate around the ethics and law that defines passive euthanasia — withdrawing life-supporting treatment to allow a person to die naturally.



The infographic features a teal background with a white syringe containing red liquid on the left. On the right, there are several white plus signs of varying sizes. The text is organized into two sections, each with a red header box.

**ACTIVE EUTHANASIA**

- It is when death is brought by an act. For example, taking a high dose of drugs.
- To end a person's life by use of drugs, either by oneself or by the aid of physician.

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**PASSIVE EUTHANASIA**

- When death is brought by an Omission. For example, when someone lets the person die, this can be done by withdrawing or withholding treatment.
- **Withdrawing treatment:** For example, switching off a machine that keeps the person alive.
- **Withholding treatment:** For example, not carrying out a surgery that will extend life of the patient for a short time.

**2011: Aruna Shanbaug case in SC**

In 2011, the Supreme Court for the first time recognised the legality of passive euthanasia in the case of Aruna Ramchandra Shanbaug v Union of India.

After being sexually assaulted by a ward attendant of Mumbai's KEM Hospital in 1973 and suffering a brain injury in the process, nurse Aruna Shanbaug was left in a 'persistent vegetative state' for decades, with no possibility of recovery. Journalist and author Pinki Virani, who wrote a book on Shanbaug, filed a petition at the Supreme Court in 2009 seeking an end to the life-supporting treatment the hospital was providing to Shanbaug, arguing that she should be allowed to die peacefully.

The court, while ruling out passive euthanasia in this case, held that Shanbaug was still alive as she did not require life support. However, the court recognised the legality of passive euthanasia, though it clarified that this could only be done with the approval of a High Court.

### **A roadmap**

In 2018, the Supreme Court recognised the legality of 'passive euthanasia' for terminally-ill patients, holding that the 'right to die with dignity' forms a part of the right to life under Article 21 of the Constitution of India. The court also laid down detailed guidelines for passive euthanasia, both in cases where the patient left an 'advance directive' or a 'living will' stating that life support should be withdrawn if they fall terminally ill, and in cases where no such directive was left behind.

Among the guidelines was the condition that the living will must be signed in the presence of two witnesses and signed by a Judicial Magistrate. The guidelines also called for multiple approvals before the terminally ill patient's case is cleared – from the treating physician, a suitably qualified medical board, and another external medical board, with representation from the local administration.

In the case of patients without a living will, the family has to give their consent for withdrawal of life support. In 2019, the Indian Society of Critical Care Medicine filed an application for modifying these guidelines, stating that they were cumbersome and unworkable.

In 2023, another five-judge bench allowed the guidelines to be modified in a number of ways. This included introducing timelines for each board to make a decision, and limiting the involvement of the Judicial Magistrate.

### **The tough decisions**

Though the Supreme Court dismissed the plea for passive euthanasia in Harish Rana's case on August 20, the bench was sympathetic to the plight of Rana's parents who had spent a significant portion of their own lives and savings caring for their son who will likely never recover.

Since his fall from the fourth floor of a building in 2013, Rana has been in a 'permanent vegetative state', suffering from quadriplegia with "100% disability in relation to his whole body", according to his hospital records.

According to medical experts, the financial implications are often drastic for patients in a vegetative state. Speaking of the tough decisions families are forced to make while caring for a terminally ill patient, Dr Bhavani Prasad Gudavalli, Head of the Critical Care Department at CARE Hospitals, Banjara Hills, Hyderabad, said, "It's not as if they (the families) don't have

compassion, but when the finances come into play and you tell them that the financial implications are very high and the chance of recovery is very low, then the family will often want to withdraw treatment.”

Relevance: GS Prelims & Mains Paper II; Governance

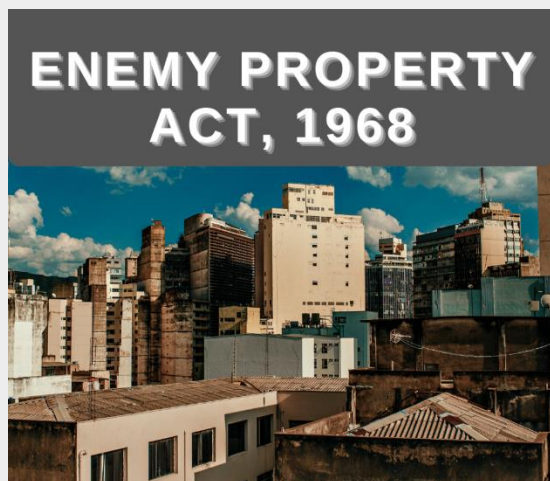
Source: Indian Express

## 2. Pervez Musharraf's ancestral land in UP to be auctioned under Enemy Property Act: What it means

### Introduction

A parcel of land in Uttar Pradesh, previously belonging to the family of former Pakistan President Pervez Musharraf, is set to be auctioned under The Enemy Property Act.

The Union Home Affairs Ministry said in a notice erected on the plot that around 13 bighas of land in the Kotana Bangar village in Baghpat district has been directed for sale through e-auction.



Under the Act, the Indian government can take control of “enemy property”. Here’s all you need to know.

### What is enemy property?

In the wake of the India-Pakistan wars of 1965 and 1971, there was migration of people from India to Pakistan. Under the Defence of India Rules framed under The Defence of India Act, 1962, the Government of India took over the properties and companies of those who took Pakistani nationality.

The Centre vested these “enemy properties” with the Custodian of Enemy Property for India. The same was done for property left behind by those who went to China after the 1962 Sino-Indian War.

The Tashkent Declaration of January 10, 1966, included a clause that said India and Pakistan would discuss the return of the property and assets taken over by either side in connection with the conflict. However, the Government of Pakistan disposed of all such properties in their country in 1971.

### How did India deal with enemy property?

The Enemy Property Act, enacted in 1968, provided for the continuous vesting of enemy property in the Custodian of Enemy Property for India. Through the department, the central government owns enemy properties across many states.

In 2017, Parliament passed The Enemy Property (Amendment and Validation) Bill, 2016, which amended the 1968 Act and The Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

It expanded the definition of the terms "enemy subject", and "enemy firm" to include the legal heir and successor of an enemy, whether a citizen of India or a citizen of a country which is not an enemy; and the succeeding firm of an enemy firm, irrespective of the nationality of its members or partners.

The amended law provided that enemy property shall continue to vest in the Custodian even if the enemy or enemy subject or enemy firm ceases to be an enemy due to death, extinction, winding up of business or change of nationality, or that the legal heir or successor is a citizen of India or a citizen of a country which is not an enemy.

The Custodian, with prior approval of the central government, may dispose of enemy properties vested in him under the provisions of the Act, and the government may issue directions to the Custodian for this purpose.

#### **Why were these amendments brought?**

The amendments aimed to guard against claims of succession or transfer of properties left by people who migrated to Pakistan and China after the wars. The main aim was to negate the effect of a court judgment in this regard.

The statement of objects and reasons in the Bill said: "Of late, there have been various judgments by various courts that have adversely affected the powers of the Custodian and the Government of India as provided under the Enemy Property Act, 1968. In view of such interpretation by various courts, the Custodian is finding it difficult to sustain his actions under the Enemy Property Act, 1968."

#### **What did these court orders say?**

One major judgment was passed in the case of the estate of the erstwhile Raja of Mahmudabad in UP, who owned several large properties in Hazratganj, Sitapur and Nainital.

Following Partition, the Raja left for Pakistan in 1957 and took its citizenship. His wife and son Mohammed Amir Mohammad Khan, however, stayed in India as Indian citizens.

After the 1968 Act, the Raja's estate was declared enemy property. When he died, his son staked claim to the properties. After a legal battle, an apex court bench comprising Justice Ashok Bhan and Justice Altamas Kabir on October 21, 2005, ruled in his favour.

The verdict opened the floodgates for further pleas in courts in which genuine or purported relatives of persons who had migrated to Pakistan produced deeds of gift claiming they were the rightful owners of enemy properties.

On July 2, 2010, the then-UPA government promulgated an Ordinance that restrained courts from ordering the government to divest enemy properties from the Custodian. The 2005 SC order was thus rendered ineffective, and the Custodian again took over the Raja's properties.

A Bill was introduced in Lok Sabha on July 22, 2010, but it could not be passed during the term of the 15th Lok Sabha and lapsed.

Finally, on January 7, 2016, the President of India promulgated The Enemy Property (Amendment and Validation) Ordinance, 2016, which was replaced by the Bill that became law in 2017.

Relevance: GS Prelims & Mains Paper II; Governance

Source: Indian Express

### 3. What is the Law Commission: its role, members, & recommendations

#### Introduction

The Union government has notified the constitution of the 23rd Law Commission of India with effect from September 1. The commission, which was notified on September 2, will have a three-year term. The tenure of the previous Law Commission chaired by former Karnataka High Court Chief Justice Ritu Raj Awasthi ended on August 31.



The commission has been notified at a time when some key items on the BJP's agenda, including the implementation of a Uniform Civil Code and holding simultaneous elections to Lok Sabha and state Assemblies, were given a fresh push by Prime Minister Narendra Modi during his Independence Day address.

#### The Law Commission and importance

The Law Commission is a non-statutory commission (not created by a law of Parliament) formed by the Union Ministry of Law and Justice through a gazette notification to help the government review functioning of laws, suggest repealing of obsolete legislation, and make recommendations on matters referred to it by the government.



The commission is usually chaired by a retired judge of the Supreme Court or a High Court, and has legal scholars as members. Serving judges can also be appointed to the commission, according to the notification on the appointment of the new panel.

The 22 Law Commissions appointed since Independence have submitted a total 289 reports to the government. The government is under no obligation to accept the reports; however, the commissions' recommendations have over the decades led to the enactment of important legislation including the Code of Criminal Procedure, 1973 (CrPC), and the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act).

The process of scrapping more than 1,500 obsolete central laws was taken up by the government after recommendations for their "immediate repeal" in reports submitted by the 20th Law Commission.

### **Constitution of the 23rd panel**

The September 2 notification issued by the Law Ministry's Legal Affairs Department says the panel will have a full-time chairperson, four full-time members including a member-secretary, not more than five part-time members, and the secretaries of the Legal Affairs and Legislative departments as ex officio members. The commission's term will be until August 31, 2027.

The chairperson and four full-time members can be serving SC or HC judges or "other category of persons", who can in theory be any expert chosen by the government. The notifications of the 2020 (22nd) and 2015 (21st) commissions also said this, but the two commissions were headed by Justice Awasthi and former Supreme Court judge Justice B S Chauhan respectively.

The chairperson and members of the 23rd Law Commission are yet to be named. The decision will be taken by the Appointments Committee of Cabinet chaired by the Prime Minister, government sources said. The chairperson and members of the 22nd Law Commission were named only in November 2022, which was effectively when the commission's work started.

A serving judge, if appointed to the commission, serves until retirement or expiry of the panel's term, whichever is earlier, and gets no additional remuneration apart from the usual judge's salary. In the "other" category, a chairperson is entitled to Rs.2.50 lakh as monthly salary and a member, Rs.2.25 lakh. The member-secretary must be an officer of the Indian Legal Service of the rank of Secretary.

### **Terms of reference of panel**

The terms of reference of the 23rd Law Commission are broadly the same as those of the past few commissions. The first three terms are: "Identify laws which are no longer needed or relevant and can be immediately repealed; Creating a Standard Operating Procedure (SoP) for periodic review of existing laws inter alia for the undertaking of simplification of language and processes; Identify laws which are not in harmony with the economic needs of the times and require amendments."

Like the 22nd and 21st commissions, the 23rd Law Commission too, has been asked to examine "the existing laws in the light of Directive Principles of State Policy and to suggest ways of improvement and reform and also to suggest such legislations as might be necessary to

implement the Directive Principles and to attain the objectives set out in the Preamble of the Constitution”.

The Prime Minister’s call last month for a “secular civil code” reflects the Directive Principle that the “state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. The 22nd Law Commission also looked into this question; but, its views are not known — the chairperson assumed office as a member of the Lokpal in March, before the Law Commission could submit its report to the government.

The 23rd Law Commission is also mandated to examine laws that affect the poor, carry out a post-enactment audit for socio-economic legislation, and review judicial administration to make it more responsive to the needs of current times.

### **What 22nd panel said**

The 22nd Law Commission presented 11 reports, including one in April 2023 that recommended that Section 124A of the Indian Penal Code, the widely criticised law against sedition, should be retained. The commission cited threats to internal security, including from Maoists, militancy in the Northeast, terrorism in Jammu & Kashmir and the Khalistan movement to back its recommendation. However, the commission did recommend certain amendments to “bring about greater clarity regarding the usage of the provision”.

This March, the commission presented a report recommending a new law to protect trade secrets. It also worked on a report on simultaneous elections, but this report, like that on the Uniform Civil Code, was not presented to the government.

Relevance: GS Prelims & Mains Paper II; Governance

Source: Indian Express