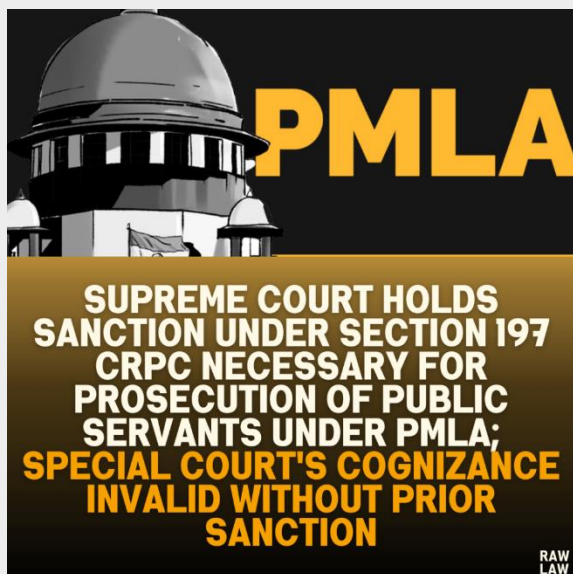


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1. SC mandates prior sanction to prosecute public servants under PMLA: What this means, its implications

Overview



Citing as precedent a recent ruling by the Supreme Court, Delhi Chief Minister Arvind Kejriwal and Congress MP P Chidambaram moved the Delhi High Court seeking a stay of their respective trials. While Chidambaram's trial in the Aircel-Maxis case was stayed on November 20, the High Court is still hearing Kejriwal's plea regarding the excise policy scam.

The SC ruling being cited as precedent came on November 6, and for the very first time mandated that the Enforcement Directorate (ED) obtain prior sanction to prosecute public servants on money laundering charges.

What is the prior sanction provision?

Section 197 of the Code of Criminal Procedure, 1973, (CrPC) bars courts from taking cognisance of offences alleged to have been committed by a judge, a magistrate, or a public servant who was "acting or purporting to act in the discharge of his official duty" while committing the alleged offence, unless prior or "previous" sanction has been given by the government. An identical requirement can be found under Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) as well.

This provision is meant to shield public servants from unnecessary prosecution. However, the explanation to the provision clarifies that "no sanction shall be required" when public servants are accused of certain crimes against women (such as rape, sexual harassment, stalking, and voyeurism), and other serious crimes such as human trafficking.

Several rulings on the provision have held that the provision does not extend its protective cover to every act or omission of a public servant while in service. It applies only to those acts or omissions which are done by public servants while discharging their official duties. For instance, in the case of *Devinder Singh v. State of Punjab* (2016), the SC held that "Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and

to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime."

What does the recent SC verdict say?

On November 6, the apex court held that Section 197(1) of the CrPC will apply to alleged offences under the Prevention of Money Laundering Act (PMLA) too. A Bench comprising Justices A S Oka and Augustine George Masih delivered the verdict in a case involving IAS officers Bibhu Prasad Acharya and Adityanath Das, both of whom are facing money laundering charges, in a case that also implicates former Andhra Pradesh Chief Minister Jagan Mohan Reddy.

In a short, 18-page decision, the SC essentially upheld an January 2019 order by the Telangana High Court which set aside the trial court's order taking cognisance of the case. The challenge was on the ground that both of them were public servants and, therefore, it was necessary to obtain prior sanction under Section 197(1) of the CrPC before they could be prosecuted.

The SC noted that although there is no specific provision in the PMLA that states prior sanction is not required, it did not find "any provision therein which is inconsistent with the provisions of Section 197(1) of CrPC". The Bench referred to Section 65 of PMLA which makes the provisions of the CrPC applicable to all proceedings under the PMLA, unless they are inconsistent with the PMLA provisions.

The SC also recorded that the accused were public servants, and that there was a connection between their duties and alleged criminal acts, thus satisfying both conditions for requirement of prior sanction under CrPC section 197(1).

The SC's judgement has now been cited by public servants such as Congress MP and former finance minister P Chidambaram and former Delhi CM Arvind Kejriwal before the Delhi HC to challenge the cognisance taken by trial court of ED chargesheets in the absence of prior prosecution sanction by the central agency. In Chidambaram's case the prosecution complaints against him were filed in 2018, and the trial court took cognisance in 2021.

Is prior sanction required in other kinds of cases?

Apart from the requirement under CrPC section 197(1), the Prevention of Corruption Act (PCA) also provides for the requirement of prior sanction to prosecute for offences alleged under PCA against public servants.

Section 19(1) of PCA contains a requirement for prior sanction from the government before the court can take cognizance of certain offenses against public officials such as accepting bribes (Section 7) or receiving undue advantage without paying sufficient consideration in return (Section 11). This sanction, in most cases, must be obtained by the police or the investigating agency. Further, the public servant must be given an opportunity to be heard by the government before allowing the prosecution to go ahead.

In 2018, the PCA was amended to expand the situations where prior sanction is necessary to prosecute public officials. Under the new Section 17A of the PCA, any recommendation or decision made by a public official "in discharge of his official functions or duties" cannot be

investigated without the "previous approval" of the government. Following a split verdict in January, a case is pending at the SC to decide if this section applies to cases filed before Section 17A was introduced in 2018.

Notably, with former CM Arvind Kejriwal challenging the cognisance of an ED chargesheet in the liquor policy excise case before Delhi HC on grounds of absence of prior prosecution sanction, one of the arguments put forth has been that for the very same allegations against him, the Central Bureau of Investigation (CBI) had filed the chargesheet against him "only after applying for Sanction u/s 19 of the PC Act, which clearly shows that the facts of the present matter also required the sanction to be obtained."

How will the requirement of prior sanction impact ED cases involving public servants?

While complaints and the investigation under PMLA will hold, cognisance of chargesheets accusing public servants of money laundering purportedly while in discharge of their duty, by the trial court can go away.

In effect, this can mean that an accused public servant, even if convicted by the trial court, can argue during an appeal that the offences alleged were in discharge of their duty, and that the trial took place without obtaining prior sanction from the government. If this argument is accepted, it can result in the court setting aside the conviction.

In *P K Pradhan v. State of Sikkim* (2001), the SC held that the argument that prior sanction under Section 197 was not obtained can be raised by the accused at any time during a trial, or even after conviction. However, the accused public servant must establish that his alleged act was in the course of the performance of his official duty.

As the SC held in the *Bibhu Prasad Acharya* judgement, "there is no embargo on considering the plea of absence of sanction, after cognizance is taken by the Special Court of the offences punishable under Section 4 of the PMLA."

Relevance: GS Prelims & Mains Paper II; Governance

Source: Indian Express

2. Rebel offensive in Syria: What is happening now and why?

Introduction

In what has been described as a "shock offensive", Syrian rebel forces recently concluded a three-day attack towards the city of Aleppo, marking a major movement in the Syrian civil war that began in 2011.

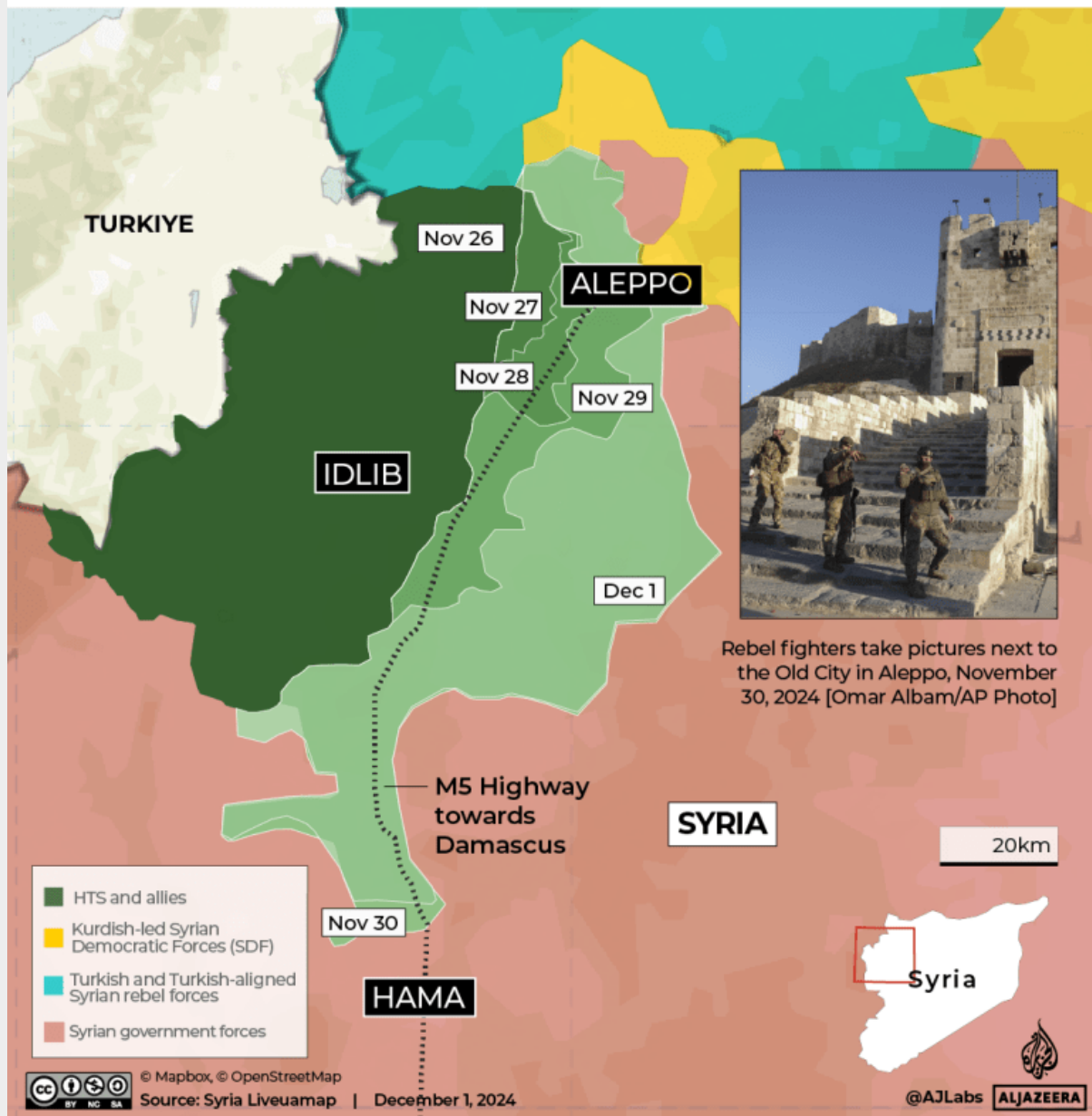
The conflict lay dormant since a ceasefire was negotiated in 2020, which is why recent developments have come as a surprise. In response to the advance, the government of Syria and Russia have united forces to regain control of rebel-occupied territory. Reuters reported their jets struck the rebel-controlled Idlib province in northwestern Syria, resulting in continued bombing for the second day. The strikes aimed to force the retreat of insurgents who stormed into Aleppo.

The rebel attack was also the first time since 2016 that opposition forces have seized territory in Aleppo.

MIDDLE EAST

Syrian rebels sweep into Aleppo

Rebel forces, led by Hayat Tahrir al-Sham (HTS), have continued their advance into Aleppo and south towards Hama, just five days after launching a surprise offensive that has prompted a new phase of the 13-year war in Syria.



What we know about the surprise attack in Syria

Syrian rebels led by the extremist group Hayat Tahrir al-Sham (HTS), which has retained control of Idlib since 2020, advanced eastward toward Aleppo, the second-largest city in the country. Two days later, Syrian insurgents seized control of Aleppo, forcing the Syrian army to redeploy and announce a "temporary withdrawal".

This offensive reignited a conflict that had been all but contained in this region.

What is the Syrian civil war and who controls what?

The Syrian civil war began around the "Arab Spring" of 2010, dubbed so as many countries in the Middle East and North Africa saw uprisings against authoritarian governments that had been in power for decades. In some nations, such as Tunisia and Egypt, ruling governments were forced out. In most others, governments and militaries crushed the movements.

The Internet and social media websites such as Twitter, which were then taking off, were believed to have played a role in the spread of pro-democracy ideas in the region. Foreign governments, such as the United States and Russia, also responded to the events based on their respective strategic interests.

In Syria, protests began against the rule of President Assad, who came to power in 2000. Today, he controls major parts of the country, barring a few regions. These include Kurdish-majority areas in east Syria, parts of the south, and parts of the Syrian desert ruled by offshoots of the group affiliated with the erstwhile Islamic State.

In March 2020, Turkey (which has historically backed Syrian rebels) and Russia (which has allied with the Assad regime) entered into a ceasefire deal in Idlib. This has remained in place, with the HTS retaining de facto control of the province since then.

HTS is a former al-Qaeda affiliate previously known as Jabhat al-Nusra (Al Nusra Front) and designated a terrorist group by the US, Russia and Turkey, among other nations. However, Turkey's links to HTS are complex. A Financial Times report points to a mutually beneficial relationship, with Turkey serving as "Idlib's ultimate protector from large-scale attacks by regime forces and their Russian backers, while Ankara also controls the border into the province, through which HTS depends on trade and taxes."

Significance of the current Syrian offensive

The latest rebel offensive marks the strongest effort by the rebels in recent years. However, Assad quelled a similar rebellion in Aleppo in 2016 with Russian air support. A similar effort is presently underway.

The surprise attack also highlights the regime's present vulnerability, with its allies being occupied in other military operations. Assad counts Iran and the Iran-backed Lebanese militant group Hezbollah among his allies but Israel, allied with the US, has been fighting Hezbollah in Lebanon over its support to the Palestinian militant group Hamas. Russia has also been at war with Ukraine since February 2022.

While Israel and Lebanon entered into a provisional "permanent" ceasefire on November 27, the Israel Defense Forces (IDF) had identified truce violations and carried out two airstrikes on Hezbollah assets in southern Lebanon. It could mean that despite recent efforts, peace may be elusive in the region in the short-term.

Relevance: GS Prelims; International Issues

Source: Indian Express

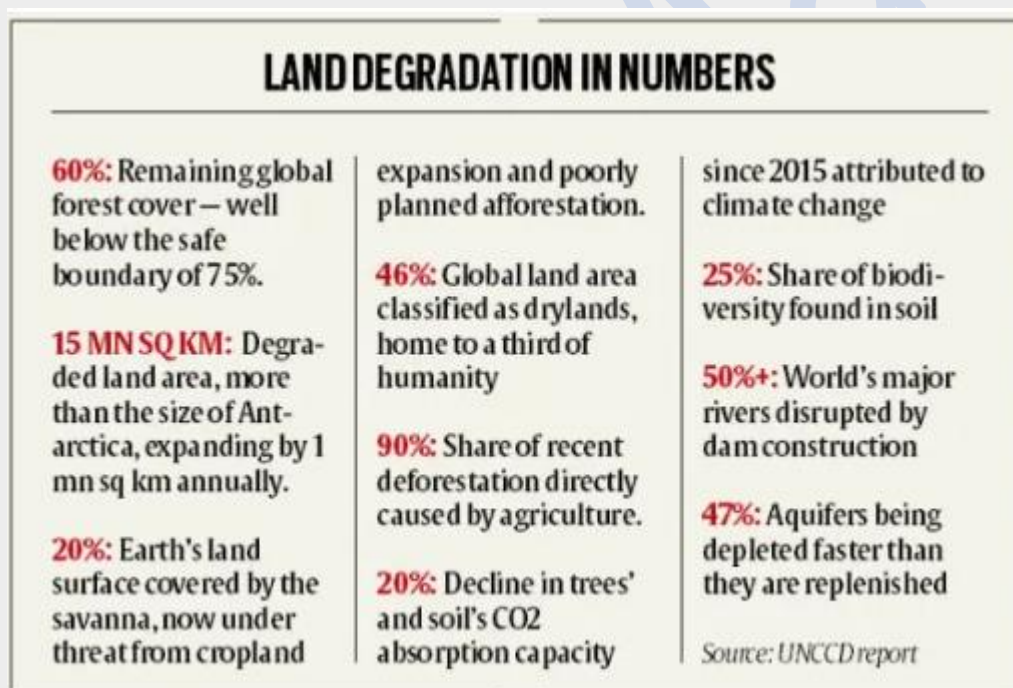
3. How land degradation is threatening Earth's capacity to sustain humanity

Overview

Land degradation is undermining Earth's capacity to sustain humanity, and failure to reverse it will pose challenges for generations to come, a new United Nations report found.

A million sq km of land is getting degraded each year, with an estimated 15 million sq km already impacted — more than the entire continent of Antarctica — by land degradation, the report titled Stepping back from the precipice: Transforming land management to stay within planetary boundaries said.

The analysis has been carried out by the United Nations Convention to Combat Desertification (UNCCD) — a legally binding framework to address desertification and the effects of drought — in collaboration with Germany's Potsdam Institute for Climate Impact Research. It was published on Monday, a day before the 16th session of the Conference of the Parties (COP16) of UNCCD began in Riyadh, Saudi Arabia.



What is land degradation? Why is it a matter of concern?

According to UNCCD, land degradation is "the reduction or loss of the biological or economic productivity and complexity of rainfed cropland, irrigated cropland, or range, pasture, forest and woodlands resulting from a combination of pressures, including land use and management practices".

Land degradation adversely affects humans and ecosystems around the planet. For instance, it raises the risk of malnutrition by reducing the quality and quantity of food production. It

contributes to the spread of water- and food-borne diseases that result from poor hygiene and scarcity of clean water. It can cause respiratory diseases due to soil erosion.

Marine and freshwater systems also suffer due to land degradation. For example, eroded soil carrying fertilisers and pesticides washes into water bodies, harming both the fauna living there and local communities which depend on them.

Land degradation contributes to climate change as well. The world's soil is the largest terrestrial carbon sink. When land is degraded, soil carbon can be released into the atmosphere, along with nitrous oxide. This can further exacerbate global warming.

The new report said land degradation has reduced the capacity of land ecosystems such as trees and soil to absorb human-caused carbon dioxide by 20% in the last decade. Previously, these ecosystems could absorb nearly one-third of this kind of pollution.

What is causing land degradation?

Unsustainable agricultural practices such as the heavy use of chemical inputs, pesticides, and water diversion are the foremost drivers of land degradation, the report said. That is because such practices lead to deforestation, soil erosion, and pollution.

"Unsustainable irrigation practices deplete freshwater resources, while excessive use of nitrogen- and phosphorus-based fertilisers destabilise ecosystems," according to the report.

Another factor is climate change — land degradation not only contributes to climate change but is also spurred by it. A report by the Intergovernmental Panel on Climate Change (IPCC), the UN body for assessing the science related to climate change, noted that global warming has worsened land degradation by increasing frequency, intensity and/ or amount of heavy precipitation, and increased heat stress.

Then there is rapid urbanisation, which has intensified land degradation by contributing to habitat destruction, pollution, and biodiversity loss.

Which areas are the worst affected?

The report has identified several land degradation hotspots in dry regions such as South Asia, northern China, the High Plains and California in the United States, and the Mediterranean. A third of humanity now lives in drylands, which include three-quarters of Africa.

It also noted that land degradation hits low-income countries disproportionately. That is because its impacts are concentrated in tropical and arid regions, and poorer countries have lesser resilience to withstand land degradation and its fallouts.

Relevance: GS Prelims & Mains Paper III; Environment

Source: Indian Express

4. Why are Taiwanese leaders' visits to the US officially called 'transits'?

Overview



Taiwan's president Lai Ching-te arrived recently in Hawaii for a two-day visit to the United States for the first time since assuming power earlier this year. Officially, the trip was referred to as a "transit", adhering to a long-held convention given China's claims over Taiwan.

China also criticised the transit, which began a day after the US approved the potential sale of spare parts for F-16 jets and radars to Taiwan for around \$385 million.

In a statement, China's Ministry of Foreign Affairs said, "China... firmly opposes any trip by leader of the Taiwan authorities to the US in any name or under whatever pretext... China strongly condemns the US's arranging for Lai Ching-te's "stopover" and has lodged serious protests with the US."

Competing claims of China and Taiwan

China has long been critical of high-level official exchanges between the US and Taiwan given its territorial claims over Taiwan. Since the inception of China's modern communist state in 1949, it has laid historical claims over the island. In turn, Taiwan also claimed to be the sole representative of China. Amid prevalent Cold War rivalries, the US supported Taiwan and officially recognised it.

However, with the end of the Cold War in 1991 and China's increasing global heft after its economic liberalisation in 1978, more countries began establishing diplomatic relations with mainland China. Its government also mandated the One-China principle, which meant that any country hoping to form diplomatic ties could not recognise Taiwanese independence.

Today, only 12 nations recognise Taiwan as an independent country. Most other countries, such as India, the US, Japan, etc., only have unofficial ties with it since they recognise mainland China.

As a result, when the US recognised China and established diplomatic ties with it in 1979, it had to downgrade its relationship with Taiwan.

Underlying conditions for US-Taiwan relationship

In three joint communiqués concluded with the Chinese government in 1972, 1978, and 1982, the United States "acknowledged," but did not endorse, the "Chinese" position that "there is but one China and Taiwan is part of China." It also said it would "maintain cultural, commercial, and other unofficial relations with the people of Taiwan".

It was only in 1994 that the first Taiwanese president went to the US for a "transit", essentially having the visit serve as a stopover to travel elsewhere. According to a US Congressional Research Service report, the Bill Clinton administration allowed Taiwan's then-President Lee Teng-hui "to stop to refuel his plane in Hawaii on his way to Central America, but not to spend the night. Apparently piqued, Lee declined to leave his plane. Some Members of Congress saw the Administration's treatment of Lee as insufficiently respectful."

De-classified official documents later showed the Clinton administration said it would "[p]ermit normal transits of the U.S., but no visits or public activities, for Taiwan's top leadership," while continuing to "[f]orbid visits, as opposed to transits..." Congress also passed the Immigration and Nationality Technical Corrections Act in 1994. Section 221 makes visas available to Taiwan officials "under specified circumstances".

The only time a "visit" has been undertaken was in 1995, when President Lee sought to make a private visit to his alma mater, Cornell University. While the Clinton Administration initially denied the request and assured China of its decision, Lee ultimately visited Cornell in June 1995. In response, China "carried out missile launches, live-fire exercises, a naval exercise, and an amphibious landing exercise over several months in 1995," the report says. The ensuing period of military tensions was termed the Third Taiwan Strait Crisis.

Recent criticisms from China

Criticisms over Lai's visit also arise from his party's more pro-independence stance. The Democratic Progressive Party has been in power since 2016 and is termed "separatist" by the communist government in China. Former Taiwan President Tsai Ing-wen, Lai's predecessor, made seven overseas trips with transit stops in the US between 2016 and 2024. One trip in 2023, where she met House Speaker Kevin McCarthy and other members, drew China's condemnations. The Taiwan Work Office of the Chinese Communist Party accused her party of "clinging to U.S. support to seek independence."

China also conducted large-scale joint military exercises around Taiwan for three days. A White House official then observed that transit visits by Taiwan presidents are "not uncommon" and said there was "no reason for any overreaction here."

Presumably to keep the visit devoid of fanfare, no high-ranking US or Hawaii state officials visited Lai to greet him when he landed in Honolulu. After the transit, Lai is scheduled to visit Marshall Island, Tuvalu and Palau (located in Oceania), which are among the few countries still officially recognising Taiwan.

Relevance: GS Prelims & Mains Paper II; International Issues

Source: Indian Express