

Gist of EPW November Week 1, 2019

Governors and the Fifth Schedule

Introduction

- The Constitution provides, in its Part X, the provision for the Fifth and Sixth Schedules.
- Article 244(1) refers to provisions under the Fifth Schedule and Article 244(2) provides those under the Sixth Schedule.
- The provision of the Fifth Schedule concerns the administration and control of the scheduled areas and Scheduled Tribes (STs) in any state except the tribal areas of Assam, Meghalaya, Mizoram and Tripura which are administered by the provisions of the Sixth Schedule.

States included under Fifth Schedule

- The Fifth Schedule was in force in nine states of India until the bifurcation of Andhra Pradesh (AP), which raises the number to 10.
- The states with scheduled areas are AP, Chhattisgarh, Gujarat, Himachal Pradesh (HP), Jharkhand, Madhya Pradesh (MP), Maharashtra, Odisha, Rajasthan and Telangana.

[Click here](#) to read about Scheduled and Tribal Areas

How is an area notified as a scheduled area?

- The notification of an area as scheduled areas takes place through the presidential order.
- Broad criteria adopted for such notification are:
 - a numerical preponderance of the tribal population
 - possibility of a compact administrative unit
 - the relative social and economic backwardness of the people/area.
- The largest administrative unit forming the scheduled areas has been the district and the lowest the cluster of villages in the block.
- Most of the districts form scheduled areas only partially.

Functions of the Governor

- The governors are required to submit annual reports to the President regarding the administration of scheduled areas in the state, and the President is also required to give direction to the state in regard to the administration.
- The governor is bestowed with special powers not to extend any particular or part of an act of Parliament and state legislature to scheduled areas that are detrimental to the interest and protection of the STs or extend it with such exception and modification as they may deem appropriate.
- Finally, the governor has the power to make regulations for the peace and good governance of the scheduled areas. In making such regulations, they are expected to abide by the advice of the Tribes Advisory Council.

Critics on execution of law

The fifth schedule theoretically at least, seem to suggest to the world at large that they have been adopted in the interests of the tribal people. However, the ground reality tells us how hollow these provisions are.

- The mandatory annual report that is submitted to the President has been grossly neglected by the concerned people, including the President.
- As and when such reports have been submitted (few and far in between), they have carried more information about the governments' routine development activities than real issues and problems faced by the tribal population.
- It is important to note that the governors, have been bestowed with the power to extend or not to extend, or extend with modification any law and regulation passed by Parliament and the state legislature.
 - The governors have failed to realise as to how these laws have a bearing on the tribes
 - Large number of legislations and rules/regulations have had disastrous consequences on the tribes.
 - Often, there is conflict between laws enacted for protection and safeguarding the interests of the tribes and general laws, which are contrary to laws safeguarding the tribal interest.
 - The various forest-related legislations such as the wildlife sanctuary and the forest conservation acts are good examples. They have adversely affected the tribal population leading to their eviction or threat of eviction from time to time.

Challenges faced by the tribal population

- Some of the real issues that tribal populations in the Fifth Schedule are facing, are issues of development-induced displacements and the consequences arising from it.
- Displacement of tribal population from the sites of large infrastructure projects, such as for dams and irrigation, industries and mineral exploitation, without any adequate rehabilitation and resettlement programmes has been a routine matter of the government activities.
- The scheduled areas have large deficits of educational institutions of primary, upper primary and higher secondary levels.
- The scheduled areas are also marked by poor health indicators.
 - Malnutrition is pervasive, resulting in high maternal, child and under five mortality rate.
 - The large shortfall of primary and community health centres, including health personnel is another indicator of health-related problems in scheduled areas.
- The land and forests are integral parts of tribal economic, social and cultural lives.
 - A large volume of their everyday food intake comes from the forests.
 - In post-independence India, there have been tight restrictions on tribal people who find it difficult to access forest resources.
- Manmohan Singh, the former Prime Minister has described the issue plaguing the Fifth Schedule area as the greatest internal security problem in the country. This observation was made in the growing presence of Maoist activity in the scheduled areas.
 - The prolonged conflict between the state and the Maoists seems to have ravaged the areas under reference and has led to unprecedented human misery, which has been going on for years.
 - Tribal women have been at the receiving end of the excess occurring in the conflict zone. For tribals, let alone bringing the culprit to book, even filing of the first information report remains a distant dream.
 - A large number of tribal people are languishing in jails without committing any crime and without trials being initiated.
 - Places where tribal population have been asserting their constitutional and legal entitlements such as in Jharkhand, they are being framed under sedition charges and sent to jails.
- Also, they have been subjected to everyday humiliation and harassment, including physical violence by the forest department.
- Various constraints and issues faced the tribal population have led them to develop a deep sense of alienation and anger against the state.

Role of the Governors

- On the role of the governors, there is a unanimous view that they are bound by the advice of the council of ministers.
 - This makes their role, to ensure security and protection of tribal people from scheduled areas, quite limited and ineffective.
 - If governors of the states with scheduled areas function in the same way as the governors of the states without scheduled areas, the provision of the Fifth Schedule is meaningless.
- It may be noted that the **Government of India Act, 1935**, introduced provincial autonomy and elected government.
 - The act brought the excluded and partially excluded areas and it was introduced directly under the administration of the governor of the province.
 - The excluded areas were kept outside the ambit of the provincial autonomy and the governor administered the territory on behalf of the governor general.
 - However, the partially excluded areas were placed under the jurisdiction of the provincial government, but the governors were to use their judgment and discretionary powers if the laws and rules brought by the provincial government should apply to partially excluded areas or not.
 - This is exactly the arrangement the Fifth Schedule of the Constitution provides.
- Laws and rules were not automatically extended to partially excluded areas. They were extended after the governor exercised his judgment and discretionary power.
- For long, legal experts and activists have been raising their voices against the violation of the Fifth Schedule provision. However, neither the union government nor the state governments ever took these seriously and went with affairs of the administration and business as usual.
- In 2008, this matter was put to discussion at the conference of the governors, which resulted in the 15-page legal opinion of the then attorney general, which was passed to governors of states with scheduled areas.
 - The key points, the attorney general, made was that even outside the jurisdiction of the Fifth Schedule area, the Articles 163(1) and 163(2) confers discretionary power to the governors rather than go blindly by the advice of the council of ministers.
 - Since then, there has been recognition of an administrative oversight by the union government.

Conclusion

- As a consequence of such a negligence of the constitutional obligation, all laws passed since the 1950s by Parliament and state legislature have been extended without examining if laws so passed have been conducive or detrimental to the interest of the tribal communities.
- Probably, the violation of the provision under the Fifth Schedule may turn out to be the classic case of the violation of the Constitution.
- After all, this has been going on ever since the adoption of the Constitution. And yet, the union and state governments, rather than acknowledging the anti-constitutional agenda and going for corrective measures, have been continuing with the administration and business as usual.

The Economy without RCEP

Context

India's announcement of its withdrawal from the Regional Comprehensive Economic Partnership (RCEP) at the RCEP summit in Bangkok.

RCEP

The RCEP, like many other regional trade agreements (RTAs) in the Asia-Pacific region, is centred on the Association of Southeast Asian Nations (ASEAN).

To read more about the RCEP: [Click Here](#)

Significance of RCEP

- Though the ASEAN, over the past decade or so, has led a number of trade-related dialogues/strategies in the region, it has failed to address substantial generic issues of regional trading such as dumping.
- For instance, China's use of the ASEAN, particularly Singapore—where India has both FTAs and double taxation avoidance agreements (DTAAs)—as the route for dumping its low-value products into India, though recognised, still continues unabated.
- Without an “origin of product” clause in most of the FTAs signed by India, establishing the source of dumping remains difficult.
- With India insisting for such clause in the RCEP, its being in the partnership is potentially conducive for its overall trading arrangements in the region.

What is more important for India?

- India cannot establish close relations with a region like China, we should not lose sight of the fact that India's bilateral trade with many of the individual countries in ASEAN (and RCEP, too) is more substantial than its trade with the region as a whole.
- Contrary to the theoretical significance assigned to the ASEAN as a free trade area, its share in world trade stands at a meagre 7% even after five decades of its existence, and India's share in the total ASEAN trade is only about 2%–3%.
- Even with such a minuscule share, India has been a dialogue partner of the ASEAN for years and is likely to continue being so even without joining the RCEP.
- India's withdrawal from RCEP is estimated to bring down the volume of RCEP trade by one third, while the bilateral trade of many of the individual RCEP member countries with India will remain unaltered.

Reasons for backing out of RCEP

- The strength of the Chinese economy in the RCEP grouping and its desperate need to find newer markets for its products in the backdrop of its trade dispute with the U.S raised fears of it dumping its products into India. This could be devastating for the local producers.
- India runs a massive bilateral trade deficit of \$53 billion with China and the fact that China has not taken satisfactory efforts to whittle down the deficit.
- India's experience with countries with which it has signed free trade agreements till now has not been beneficial for India. Though trade has increased post-FTA with South Korea, ASEAN and Japan, imports have risen faster than exports from India.
- According to a paper published by NITI Aayog, India has a bilateral trade deficit with most of the member countries of RCEP. More importantly, while exports to RCEP countries account for just 15% of India's total exports, imports from RCEP countries make up 35% of the country's total imports. Being a part of RCEP would lead to an adverse current account deficit. The country had more to lose than gain from joining RCEP.
- The country had little choice but to exit after its safeguard requests were not conceded.
 - India's request for country-specific tariff schedules was rejected in the negotiations.
 - India's request for an auto-trigger mechanism to check a sudden surge in imports from particular partner countries was turned down.
 - India also argued for stricter rules of origin, and rightly so too, given the possibility of China trying to dump its products via a third country.

- Service sector liberalization was not given equal prominence like the trade of goods. The issue of the movement of professionals between grouping members led to an impasse in the negotiations.
- Since India has active FTAs with most members of the RCEP except China, Australia, and New Zealand, there will be no economic impact by not being part of RCEP.
- Farmers organisations had expressed concerns on joining the RCEP as it would affect the agricultural sector in a negative manner

How RCEP will affect the agricultural sector:

- At the heart of the RCEP is the idea of lowering trade tariffs. The RCEP will permanently bring down import duties on most agricultural commodities to zero which will lead to countries looking to dump their agricultural produce in India which would lead to a drastic drop in prices.
- This will aggravate the agrarian crisis even as the input prices in India are heavily taxed and farmers are not given profitable prices, resulting in substantial losses and farmer debts. This will serve as a big blow to their livelihood.
- Of particular concern in the agricultural sector would be that of the dairy sector and plantations sector, which are going to be hit very hard if India decides to be part of RCEP.
- Dairy farming and farm interests will get seriously compromised if the RCEP deal gets done. Dairy farming provides the much needed alternate income to farmers. New Zealand and Australia being part of RCEP will invariably lead to the dumping of their dairy products into India.
- The southeast Asian countries have larger and cheaper production of plantation crops like rubber, coconut, palm oil as compared to India and opening up of the markets will lead to a large inflow of these products given their price competitiveness.
- There are no benefits apparent at all for Indian farmers while on the other hand, they will be severely affected by dumping of heavily subsidized products, with nearly no tariff barriers possible and no other protection mechanisms either.
- Now is the wrong time for such liberalization, according to farmers' organizations, because the agrarian crisis refuses to get solved, and the manufacturing sector is in doldrums; together they are pulling down growth.
- The IPR clauses are likely to seriously impinge on farmers' seed freedoms. Seed companies will get more powers to protect their Intellectual Property Rights, and farmers would be criminalized when they save and exchange seeds.
- Foreign corporations could bypass national courts and sue our governments for favouring our farmers and workers at private arbitration tribunals.
- Opening up of the markets will lead to dependence on foreign imports. Any differences in the future might impact the food import supply. India's food sovereignty would be at stake. India's food security has been built up over years of hard work and this could be jeopardized.

Advantages and Disadvantages of Exiting RCEP

[Click Here](#): to read the advantages and disadvantages of not joining RCEP

Impact of this decision

- Moving out of the deal at the last minute is, in fact, a political masterstroke of the Indian government.
- The decision is more of a politically motivated move rather than an economic functionality in a similar way as that of setting up of SAARC and keeping it alive for over three decades now, despite the tenuous relationships among its member countries.
- To the global audience, this (last-minute) move demonstrates the ruling government's accommodative diplomacy towards its Asia-Pacific counterparts, while back home it provides a "common-man friendly" image of the government.

- However, the relief that it brings for some players in the economy is only temporary, for addressing the current structural anomalies of the economy is beyond its scope.
- For instance, of what relevance is non-participation in RCEP to those innumerable small and marginal dairy farmers who could hardly move out of the trader-intermediated local markets of fresh milk?
- While the bigger (domestic) players' monopoly power in the domestic markets gets safeguarded, this move is certainly no booster for the international competitiveness of Indian dairy products.

Way forward:

- There is still an opportunity for India to join RCEP later provided that the issues India has raised with the deal are resolved.
- India's participation in RCEP has significant stakes for the other members of the RCEP given India's huge market base and its strength in some sectors.
- India apart from focusing too much on the harm that could arise out of the deal must also consider opportunities it provides. Instituting structural reforms at home and empowering the domestic manufacturers can help them compete with the other RCEP members should India decide on joining RCEP in the future.
- India and RCEP members must consider a "balanced approach" for future negotiations.

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