

## Gist of EPW July Week 1, 2020

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## NEET Undermines Constitutional Provisions

### Context:

- Recently, petitions have been filed by the major political parties from Tamil Nadu in the [Supreme Court](#) in relation to the National Eligibility Entrance Test (NEET), which is an entrance examination for students who wish to get enrolled in undergraduate medical courses (MBBS) and Dental courses (BDS).
- The parties demanded that 27% of the all-India allocation of medical seats in Tamil Nadu be reserved for Other Backward Classes (OBCs) under Article 32 of the Indian Constitution.

### Issues with NEET

- From the very beginning, NEET has subordinated state governments on the matter of medical education to the detriment of students from such states.
  - It has made the admissions difficult for those students who cannot afford private coaching to clear the NEET.
- NEET has also subordinated states' public health goals in the "national interest," though what that "national interest" is supposed to be, has never been clearly articulated, apart from vague assertions of "corruption" in the system.
- NEET ensures the reservation of SCs and STs in the allocation of all-India seats but it does not provide the same treatment to OBCs.

### Observations made by the Ministry of Health and Family Welfare & the Supreme Court:

#### The Ministry of Health and Family Welfare

- The Ministry of Health and Family Welfare, in 2019, provided the only explanation in this context and gave two reasons for not providing reservations to OBCs.
  - The first reason is that the matter is sub judice in the Supreme Court in *Saloni Kumari Vs Department of Health Services*.
  - The second reason is that each state follows its own reservation policies for OBCs.
- Both the reasons stand for preposterousness.
  - A sub judice matter does not prevent the government from taking any decisions on its part.
  - The other reason is also not justifiable as the idea of a centralized process of admission has been taken by the Union government itself but, now the government is denying the reservations by making this an issue of federal concerns.

#### The Supreme Court

- The Supreme Court has also failed to provide any solution to this matter.

- The judgment made by a three-judge bench of the Supreme Court in 2013 was very controversial as it was delivered without circulating it to other judges on the bench.
- When a review was filed, the main judgment was recalled in 2016, requiring the matter to be heard afresh. This matter came to an end in 2020 with the Supreme Court upholding the constitutional validity of NEET.
- At the same time, no judgment has been provided in the case of Saloni Kumari, which was filed four years ago regarding the reservations to OBCs.

## Conclusion

- Reservation ensures the representation of socially excluded groups in education and it is a constitutional necessity to ensure social justice.
- The Central Government, therefore, should use its power to guarantee reservations to OBCs in all India medical seats under NEET on a priority basis.

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## Food Security and Covid-19: Why India's Public Distribution System Requires an Overhaul?

### Context:

- Due to the global pandemic, India has been facing a severe migrant crisis along with food insecurity. It throws light on the inefficiencies of the public welfare delivery system.
- This article highlights the factors which require special attention amid the global crisis in order to improve the Public Distribution System in India.

### What are the issues?

#### Public Distribution System and the relief package of 1.70 lakh crore

As the lockdown in India set in, Finance Minister Nirmala Sitharaman announced free food grains and cash payments to women, elderly, and farmers as part of the 1.70 lakh crore [Pradhan Mantri Gareeb Kalyan Yojana](#) in March 2020.

- It was reported that as of May 2020, 2.42 metric tonnes of pulses have been dispatched to various states and union territories, which further have been distributed to 5.21 crore households.
- As part of the relief package, the government had also announced two months' worth of free food grain supply for migrants who were not covered under the [National Food Security Act](#) or who did not hold a ration card.
- Despite the introduction of such a huge package, the benefits are yet to reach the beneficiaries. Migrants are struggling to get the ration cards.
- The Public Distribution System (PDS) has been unable to account for a mobile migrant population, it continues to base its grain allocation on an outdated population estimate, and it has remained ignorant of ground realities when it comes to the issuance of ration cards and Aadhaar cards. These loopholes have rendered an already vulnerable section of the society even more susceptible to the dangers that accompany a pandemic and a severely affected economy.
- PDS faces various challenges such as weak institutions, elite capture, rent-seeking and inefficient technologies that act as a hindrance in the way of accessing the food.

### Insensitivity to the Local Contexts of Different States

- It is observed that the Public Distribution System functions differently in different states, depending upon the political-economic conditions of the states.
- The guidelines regarding the Public Distribution System are the same for all the states but some states make their own adjustments.
  - For example, in Bihar, Ration cardholders are not able to avail of the complete benefits of the PDS because PDS shop owners find it profitable to keep fake ration cards which they use in order to divert commodities and sell them in the open market for higher profits.
  - On the other hand, fair rationing is of political usefulness for some states like Kerala which focuses on the key benefits derived from the fair distribution of food grains to the ration card holders under key political agenda.
- Therefore, due to the varying conditions across states, the PDS policies are insensitive and it also points out to the loopholes present in the ration card system which prevent the proper execution of the policies.

### **Differential Access and Heterogeneous Social Positioning**

- The result of the surveys conducted across Odisha, Bihar and Uttar Pradesh depicts that social factors such as caste, class, and gender also affect the access of PDS policies in India.
- Positions of people in the social hierarchy also play a dominant role in determining the access of fair benefits of PDS to the people. The PDS thus, should be defined as a “bundle of powers,” instead of a “bundle of rights.”
- Several examples of such cases are:
  - A Scheduled Caste (SC) woman in Bihar claimed that she was denied the ration card due to her faithfulness to a Bhumihaar household who had contested and lost the panchayat election in the village.
  - Another example is where an SC woman was denied the ration card due to some political confrontation of her husband with some ruling upper caste mukhiya.

### **Aadhar and Computerized PDS**

- The Aadhar based computerized PDS was introduced with the objectives of transparency, effectiveness and accountability.
  - A study conducted in Karnataka concludes that the objective of removing all the leakages via technology has not been achieved.
  - The major drawback found in this system is that the biometric machines are prone to tampering. That is, there is a significant amount of discretion that rests on ration dealers who can choose to manipulate the weighing mechanisms, refuse to provide bills to the beneficiaries or mute speakers as they announce the type and weight of the commodities.
  - Furthermore, there is a lack of use of software to monitor godown transactions and incorrect biometric recognition as well.
  - Despite end to end computerization of PDS, the Fair Price Owners can manipulate the weighing mechanism due to the manual features of entering the quantity.
- Therefore, it can be said that biometric technology alone cannot provide the solution to all the problems found in the PDS.

### **Conclusion:**

- Various researchers in their study observed that this end to end computerization of PDS can further open the window for newer leakages in the system.
- When it comes to the PDS, Aadhaar remains an important source of exclusion. That is, there could be a cancellation of cards (or names on ration cards) if beneficiaries do not have an Aadhaar number, there could be a failure to link the Aadhaar card and the ration card, or there could be a failure of the Aadhaar-based biometric authentication (ABBA) at the time of purchasing grains.

- Keeping all these in mind, researchers suggest that instead of using a technologically-demanding and unreliable option such as ABBA for last-mile authentication, the central government should explore more reliable options such as non-biometric smart cards.
- Finally, the welfare delivery system also requires a more efficient approach towards administrative reforms.

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## Lawless Lawmaking in Covid-19 World

### Context:

- This article focuses on some of the mistakes committed by the Central Government in handling the Covid-19 crisis.
  - The union government imposed one of the harshest lockdowns in the world too soon, for too long, and lifted it chaotically, resulting in a widespread humanitarian crisis and poor control of the spread of Covid-19.

### Two areas that need special attention

- One, the excessive centralization of decision-making.
- Two, a certain lawlessness in the way in which rules and regulations have been set out, leading to a breakdown in the rule of law.

### Legislations used by Central Govt. and State Governments

- The Central Government imposed the total lockdown to prevent the spread of the Covid-19 pandemic under the Disaster Management Act, 2005.
  - The Act was never envisaged to deal with a nationwide outbreak of a pandemic and does not have the legal mechanisms that would enable the management of such an epidemic.
- Various state governments had also imposed similar tools even before the Central Govt's imposition drawing their powers under the Epidemic Diseases Act, 1897.
  - It was passed during the colonial period and provides only a skeletal structure which leaves almost everything to be decided by the state government when the need arises.

Neither legislation was, however, fit for the purpose.

### Unlawful exercise of power

- Ideally, since we did not have the laws on the statute books to fight a pandemic of such scale, the Parliament should have been convened to pass a new legislation, like how many countries did. Unfortunately, the Executive usurped vast powers practically to run every nook and corner of the country.
- At the state level, the scope of the powers under Section 144 of the Code of Criminal Procedure was being used by executive magistrates and their equivalents in the police to impose all sorts of aberrant rules in enforcing the lockdown.
- According to PRS, as of 14 June 2020, over 316 notifications related to Covid-19, at least 240 since the lockdown, have been issued to citizens by the union government and 2,684 at the state level.

The obvious implication of this is that, far from being a rule of law country, India descended into a rule-by-law country with no one, not even the government, quite sure what the law said on what was permitted or prohibited during the lockdown.

### **Excessive Centralization and violation of federal principles**

Centralization in decision-making has occurred on two levels:

- First, states have been disempowered greatly.
  - The power to legislate on matters of “public health and sanitation” is within the exclusive purview of the state governments while the union has been given the power to prevent the spread of infectious diseases between states.
  - This division of legislative power reflects the fact that the states are going to be much “closer” to the citizens in delivering effective health and sanitation services than the union government, which does not have a presence in every single village or city in the country.
  - Attempts in the Constituent Assembly to place these powers in the Concurrent List were resisted.
- Second, within the union government, all decisions have been made within the Ministry of Home Affairs (MHA) with little input from other ministries or departments.
  - Further “Guidelines” became mandatory under the threat of penal action and, mystifyingly, for a public health crisis, most of the guidelines were being issued by the MHA rather than the Ministry of Health and Family Welfare.
  - States have been reduced to being the implementing agencies of the union’s whims with little room or flexibility to adopt the right strategy to manage Covid-19.

Even if one assumes that the power was validly delegated to the MHA, it is simply beyond comprehension how a department that concerns itself with internal security was considered the appropriate agency to deal with an issue of public health.

### **What should have been the focus area of the Central Govt?**

- An ideal situation would have been the union government using its powers to focus on the interstate spread of the disease by cutting down interstate travel.
- It could have focused its energies on doing the things that states could not do: assisting with foreign procurement of testing kits, personal protective equipment, and interstate coordination and assistance, among similar activities.

### **Conclusion**

- This depicts that centralization failed to address the Covid-19 outbreak.
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