

## Gist of EPW December Week 1, 2020

### TABLE OF CONTENTS

1. [The Coal Conundrum](#)
2. [The Predicament of the Social Media Ordinance](#)
3. [Infallible Farm Laws?](#)
4. [Crumbling Firewalls](#)

### The Coal Conundrum

#### **Context:**

The article discusses the significance of the recent auction of coal blocks by the government and highlights the need for setting up an independent coal regulator.

#### **Background:**

- In order to achieve self-sufficiency in coal production, the government has auctioned 19 of the 41 coal blocks for commercial mining.
- For the first time, entrepreneurs have been allowed to sell coals freely in the open market.
- Earlier, coal mines were allocated to end-users especially large corporations to mine coal for their own use.
- This is also an effort by the government to buoy up the coal sector which has suffered setbacks in 2014 when the Supreme Court cancelled the allocation of 204 coal blocks auctioned by the government since 2003.
- The ruling of the Supreme Court had an adverse impact on the coal sector and has reduced the participation of new players in coal mining. In the last three years, only five new coal mines have been allocated to the private sector.

#### **State of the coal sector in India:**

- After the nationalization of coal mines in 1973, there was a growing shortage of coal. Coal is vital for India's energy security, as it powers around 70% of the electricity generation in the country. That is why in 1993, the private sector was allowed into captive mining.
- However, even after this, coal production substantially lagged behind the demand. As electricity generation picked up, it resulted in an increase in the import of coal.
- Now, coal imports have touched 249 million tonnes in 2019–20 accounting for more than a fifth of the total domestic consumption.
- In 2019-20, India imported coal amounting to 1.59 lakh crore as compared to 14,371 crores in 2004–05.

- This is even after India has the fifth largest coal reserves of 106 billion million tonnes, which is around 9.9% of the total global reserves.
- This has also led to a flight of much-needed employment opportunities abroad along with a needless drain of foreign exchange resources.

#### ***Reforms initiated by the government:***

- To scale up the production of coal, the government amended the Coal Mines (Special Provisions) Act of 2015 and the Mines and Minerals (Development and Regulation) Act, 1957 by enacting the Mineral Laws (Amendment) Act, 2020.
- This has been done in order to allocate coal mines to private players.
- In 2019, to attract more players in this sector, the [Foreign Direct Investment](#) policy was also changed by the government to allow 100% investment for mining and sale of coal under the automatic route.
- The successful auctioning of 17 coal blocks will encourage the government to auction more coal blocks next year.

#### ***Need for more reforms:***

- However, there is a need to do more apart from facilitating the entry of new domestic and foreign players to achieve the ambitious target of raising coal production to more than one billion tonnes by 2023–24 in order to reduce coal imports to zero. In 2018-19 the coal production in India was 729 million tonnes.
- Previous experiences of allowing new entrants in the coal mining sector are not very encouraging despite consistent efforts made in the last two decades.
- The total share of new entrants in the total coal output is still below 5%. From 2014-15 to 2018-19, the total number of private coal producers has reduced from 31 to 24 and in the same period, coal produced by them decreased from 42 million tonnes to 34 million tonnes.
- This, in turn, has also impacted the growth of domestically produced coal. The growth of domestic coal production has decreased from 5.9% in the 10 years up to 2009–10 to just 3.2% in the last decade.

#### ***Need for an empowered coal regulator:***

- Complex regulatory regimes and poor governance of the various ministries that deal with the coal sector are among the various reasons which prevent new entrants to increase their coal production numbers.
- Various committees such as the Energy Coordination Committee, the Expert Committee on Road Map for Coal Sector Reforms, and the Working Group on Coal in the Ninth Plan have suggested setting up of a regulatory authority for the coal sector. The regulatory authority would have a wide power to deal with the development of coal resources and to regulate its extraction and use within the overall framework set up by the government.
- In 2013, a bill for the same was tabled in the [Lok Sabha](#), but it lapsed with the dissolution of the 15th Lok Sabha.
- In March 2014, a non-statutory coal regulator was set up through a government resolution. However, this coal regulator is devoid of any adjudicatory power and has only an advisory role.

- An empowered coal regulator is necessary to protect the interests of smaller players and provide them with a level playing field, given that large players dominate the Indian coal industry, with one major enterprise alone accounting for a four-fifths share of the total domestic production.
- To do so, the government needs to abdicate its regulatory role in favour of an independent authority.
- This independent authority will protect the interest of all stakeholders and will also act to maximize coal production to meet the ever-increasing demand for coal.

#### **Conclusion:**

- The government has also shown its willingness to set up a coal regulator.
- The coal mining sector has huge externalities. It has implications on rural livelihoods, resource mobilization, environment, industry, and the external sector. For this, a specialized agency is required to look into all the aspects of coal mining and facilitate policy-making to protect the interests of various stakeholders and at the same time ensure sustainable growth of the coal industry.
- Such a move will help India to achieve self-sufficiency in coal production. This is also crucial for achieving energy security.

## The Predicament of the Social Media Ordinance

### **Context**

The article analyses the issues revolving around the promulgation of an ordinance by the Kerala government to amend the Kerala Police Act, 2011 by adding section 118-A to it.

### **Background**

- The ordinance mandates punishment for anyone who creates or sends any information that is offensive or is intended to offend or threaten another person, through any means of communication, with imprisonment of five years or a fine of Rs. 10,000 or both.
- This has gained a lot of attention from internet users across the country and it is seen as a violation of the right to freedom of speech and expression, protected under the Constitution of India.
- This proposed amendment appears to be in conflict with the landmark judgment passed by the Supreme Court in *Shreya Singhal v Union of India (2015)* under which the Supreme Court struck down section 66A of the Information Technology (IT) Act, 2000 which provided provisions for the arrest of those who posted allegedly offensive content on the internet, thus upholding freedom of expression.
- The Kerala government, however, has backtracked and announced that it would withdraw the said provision.

### **Concerns related to the issue of the ordinance:**

- Although the government of Kerala has promised to take down the ordinance in face of huge public outcry, people should not be complacent about the impacts of the promulgation of the ordinance.
- There are four major aspects of this decision of the Kerala government that are a source of concern regardless of the final outcome of the ordinance.

- First, this proposed ordinance of the Kerala government is ham-fisted and unconstitutional.
  - It represents a regressive mindset that aims to use criminal laws to deal with the issue of social media misuse.
  - The ordinance is ill-thought and poorly drafted. Under this, a vast discretion to the police has been given to persecute the speech of anyone they find unacceptable.
  - Any law should be criticized for its intended use and not for potential misuse, but here, in such a vaguely proposed criminal law it is difficult to make any such distinction.
- Second, this is not an issue of Kerala alone. Social media and the internet do not adjust within the limits of the nation or state.
  - This law is not going to affect only the people in Kerala. If people from other states say something unacceptable to someone in Kerala then they may also be punished.
  - If a similar ordinance is issued by any other state, then it will inevitably affect the internet users across the country and any pushback against such a law is not the prerogative of only the residents of that state.
  - A state with a less vigilant civil society may enact a similar law, constraining the rights of people across India.
- Third, issuing an ordinance amounts to contempt of the Supreme Court. In the Shreya Singhal case, the Supreme court has declared Section 66A of the Information Technology Act, 2008 unconstitutional. However, in almost every state police continue to file cases against people under this section.
  - The Supreme Court had also struck down the earlier version of Section 118-A of the Kerala Police Act.
  - Irrespective of these, neither governments nor police give regard to the Supreme Court's judgment when it comes to prosecuting people or making law.
  - Police across states keep harassing people for their comments on the internet under Section 66A of the IT Act, which has been struck down by the Supreme Court. This is happening even after the Supreme Court has taken cognizance of such misuse.
- Finally, this ordinance also represents a kind of frustration of governments across the globe. The Internet is not a decentralized entity, which allows free flow of information, rather it is dominated by "Big Tech" of the USA who has monopolized the collection of data, selling of services, and display of advertisements.
  - Such a monopolistic business model has led to the proliferation of many evils such as hate speeches, promotion of genocide and sexual harassment, interference in elections, etc. and this has primarily affected developing countries.
  - The big tech companies do not show concerns about their business models in countries that cannot enforce their laws upon them.
  - Most tech companies such as Facebook, Google, Twitter, etc. are out of reach of the jurisdictions of America or European countries. In other countries, they have not been held accountable for their failure to regulate speech on their platforms to reduce real-world harm.
  - As a result, governments target internet users instead of owner's i.e. tech companies who allow such harms to continue.

**Conclusion:**

- Governments in India need to acknowledge that without ensuring accountability of platforms that facilitate the proliferation of hate speech (Big Tech), attempting to criminalize speech is a fool's errand.

## Infallible Farm Laws?

**Context:**

The article analyses the views of the government and farmers on the three farm laws in the wake of protests by farmers.

**Background:**

- The complete unwillingness or conditional willingness of the Central government to have a discussion with the farmers on the controversial farm laws brings out more questions than providing answers to the standoff between the two.
- It is evident from the media reports that the government's unwillingness to deliberate and its adoption of repressive modes and measures to handle the protests by the farmers implies that the government will not re-examine the limits of such laws, specifically considering the viewpoint of the farmers' interests.

**Government's stand on farm laws:**

- Over the farm laws, the government's stand is that these laws are absolutely beneficial to the farmers. However, the stand of farmers over these laws is just opposite to that of the government.
- What needs to be addressed is whose claims, governments or farmers', carry conclusive weightage.
- Spokespersons of government, as well as economists who are pro-business, are accusing opposition parties of misleading the farmers.
- Those who support these laws seem to claim that farmers lack the independent moral capacity to decide what is good or bad for them. Their assertion also suggests that farmers lack historical knowledge of the private businesses that focus on profit maximization.
- Whatever be the government's claims vis-a-vis the farm laws, we have seen in the past that a market-oriented economy follows skewed patterns favouring private interests diminishing the effectiveness of socialist alternatives.

**Farmers' stand on farm laws:**

- The protesting farmers have been arguing that the understanding of the government about farmers' knowledge is flawed.
- Also, the arguments of the government defending the farm laws are an insult to the farmers because it seeks to undermine the farmers' sense of meaningful survival that becomes independently active against the intrusion of private players in the agricultural market.

- If the farm laws are viewed from farmers' autonomous position, then the justification given by the government over these farm laws that entry of private players will result in healthy competition among themselves and as a result farmers will get a handsome return, appears to be naive.
- The government is saying this as a win-win for both parties. However, such an argument is based on the assumption that there would always be favourable agro-climatic conditions for production.
- According to farmers, these farm laws can have several adverse consequences which may affect their agricultural interests.
- Following questions have been raised by them:
  - Had it ever happened that unregulated markets whose only aim is to maximize profits would favour farmers?
  - Whether entry of big business houses in agricultural markets led to even distribution of advantages between farmers and private players?
  - Will these laws facilitate parity in obtaining profit from the market mechanism and be a win-win situation for both farmers and business houses?

#### ***Analyzing the protest by farmers:***

- Farmers are convinced that big business will control the agricultural market to advance their own interests only.
- Farmers' protests suggest that the government has taken several decisions in the interests of big businesses paying little heed to their own interests.
- The determination of protesting farmers reflects that their protest is not based on the perception that their interests will be compromised in the face of threats posed by big business rather it is based on the true picture of a market driven by private interests.
- The truth does not lie on the perception of either farmers or the government, rather it is based on the consequences the farm laws would have on farmers' interests.

#### ***What needs to be done?***

- In the given circumstances, the government needs to take steps backwards or go on the back foot.
- Going on the back foot means to give a second thought to the provisions of the farm laws aimed at reconsidering decisions that were previously taken over these laws.
- Protesting farmers expect second thoughts by the government over these farm laws. If the government is resorting to second thoughts, then it would be an acknowledgement of the fact that there was a mistake in the conception and conclusion of these farm laws.
- However, as of now, it does not seem that the government will agree to give a second thought on these issues.

#### ***Conclusion:***

- The government is treating its decision as infallible, a decision which cannot be changed and one should be obliged to follow it.
- It can perhaps be said that the farmers can challenge this infallible decision of the government owing to their more informed position on the issue of the farm laws.

## Crumbling Firewalls

### **Context:**

- The article analyses the issues of bank ownership by industrial houses and highlights associated risks to the economy.

### **Background:**

- An internal working group of the Reserve Bank of India (RBI) has recommended that industrial houses be allowed to promote commercial banks.
- This has been recommended even after acknowledgment by the working group that all experts except one whom they have consulted on the issue, have voiced their opinion against any such move. Also, the recommendation has drawn opposition from all quarters.

### **Quest for Corporate ownership of banks:**

- The issue of ownership of banks by big corporates has been discussed for over a decade. The then finance minister Pranab Mukherjee had highlighted the need for providing banking licenses to more aspirants which also included non-banking financial companies while delivering the budget speech.
- RBI then floated a discussion paper highlighting the advantages and disadvantages of allowing industrial houses to promote banks either on their own or by allowing some major financial sector players to promote banks.
- The paper also discussed the possibility of allowing corporate houses to own regional rural banks as an intermediate step before allowing them to set up banks.
- However, the licensing guidelines issued by RBI in 2013 thwarted the move of corporate ownership of banks. The guidelines stated that any private and public sector entities and non-banking financial companies will be eligible for banking license if:
  - They qualify for the fit and proper test of the RBI.
  - They have a previous record of sound credentials and integrity and are financially sound.
  - Additionally, they must have a successful track record of running their business for at least 10 years.
- This discouraged many industrial groups who were hopeful of getting a license to promote commercial banks.
- Now, the internal working group of RBI has recommended corporate ownership of commercial banks by amending the Banking Regulations Act, 1949.

### **Issues with corporate ownership of banks:**

- Giving ownership of banks to big business is a debatable issue across the world. Developed economies such as the USA didn't allow such ownership completely and some allow to a varying degree.



- There are many reasons for such restrictions. Only a stand-alone bank, independent of any industrial houses or other partisan groups, can look into loan applications in an impartial manner in order to minimize adverse selection. Also, stand-alone banks can efficiently monitor the implementation of funded projects to ensure that funds are allocated in an efficient manner to push economic growth.
- **Connected lending:** Banks owned by corporate houses may be forced to favor group companies, at the expense of those who are more deserving. This is called connected lending. This will undermine the role of banks as financial intermediaries. It will also lead to inefficient uses of funds along with impacting profitability and solvency of banks.
- Corporate-owned banks can lend group companies at cheaper rates. This effectively transfers the risk associated with the projects to banks. The cost of the risk now has to be borne by other shareholders of the banks and in case the bank collapses, the whole burden will be shifted to taxpayers.
- **Circular lending:** There is a risk of circular lending where a corporate bank A funds projects of an industry group which owns corporate bank B, which in turn funds projects of the industry group which owns corporate bank C. Finally, corporate bank C funds projects of the industry group which owns the corporate bank A. This is hard to track on a real-time basis.

#### **Role of RBI:**

- With the available legal structure like shell companies and onshore and offshore ownership, it is easier to bypass regulatory restrictions.
- Also, RBI has limited regulatory oversight which is evident from malpractices in the banking sector which keeps propping up.
- This reflects not only the inadequate regulatory competence of RBI but also poor governance in the banking sector overall.
- It is only during the period of Raghuram Rajan as governor, RBI launched the asset quality review to identify bad loans. The amount of bad loans appeared to be two to three times larger than expected. It was not just bad accounting but regulatory forbearance which was responsible for this situation.
- Amidst pandemic, when bad loans are expected to increase further, allowing corporate ownership of banks will require RBI to monitor and thwart connected and circular lending simultaneously. Also, RBI is required to identify shell companies and take other tasks that will test its capabilities. This is going to be a recipe for disaster.
- Moreover, it is difficult to punish banks because it is difficult to establish whether said malfeasance is due to the poor due diligence of banks or due to incompetence, or whether it is a case of corruption.

#### **Conclusion:**

- With banking licenses in their hands, big industry groups will further tighten their grips on the economy as they already dominate key sectors of the economy such as telecom, organized retail, aviation, software, and e-commerce.
- Ownership of banks by them will compromise the interests of small players. They will establish their control over other sectors and this, in turn, will lead to more concentration of wealth.



- This will result in the weakening of the government's ability to direct the economy in the right direction.
- Overall, allowing big business to own banks will be a mistake, and it will cost the economy dearly.

