09 May 2024

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A chance to settle a constitutional clash (9 May) (GS Paper II: Fundamental Rights and DPSP)

The top court has a chance, in Property Owners Association vs State of Maharashtra, to resolve the clash between fundamental rights and Directive Principles of State Policy

- The Supreme Court of India recently concluded hearings on the Property Owners Association vs State of Maharashtra case.
- The case revolves around two crucial questions:
- What does the term "material resources of the community" in Article 39(b) of the Constitution signify?
- Are laws aimed at fulfilling the objective outlined in Article 39(b) immune from challenges based on the fundamental rights to equality and freedom?
- The second question highlights a conflict between Part III and Part IV of the Constitution.
- Part III focuses on fundamental rights, while Part IV lists Directive Principles of State Policy (DPSP), which are goals for the state to pursue.
- Fundamental rights are enforceable, whereas DPSPs are considered aspirational objectives.
- This tension between the two parts has been a recurring theme in India's constitutional history, particularly evident during the 1970s when amendments were made to exempt certain legislations from judicial review.
- The Supreme Court has repeatedly grappled with clarifying the relationship between fundamental rights and Directive Principles of State Policy (DPSP).
- This issue has been present since the landmark Kesavananda Bharati vs State of Kerala case in 1973.
- Despite attempts to resolve the conflict, the tension between these two parts of the Constitution persists.
- The resolution of this conflict by the Bench in the Property Owners case will significantly influence the future trajectory of the Constitution.
- **Initially, the Constitution's text seemed clear: Article 13 stated that laws violating fundamental rights would be void, while Article 37 stated that DPSPs were not enforceable in court but should guide state policy.**
- Early judgments by the Court, such as Mohd. Hanif Quareshi vs State of Bihar (1958), emphasized the importance of both Part III (fundamental rights) and Part IV (DPSP) but asserted that laws should not infringe upon fundamental rights while implementing DPSPs.

The introduction of Article 31C

- In 1971, the Constitution was amended through the 25th amendment, introducing Article 31C.
- Article 31C aimed to shield certain laws from judicial review, particularly those related to Article 39(b) and (c) which address securing material resources and preventing wealth concentration.
- Article 31C stated that laws implementing these directives could not be declared void even if they violated rights conferred by Articles 14 or 19, which include the right to equality and various freedoms like freedom of expression and profession.
- This meant that laws aimed at securing material resources, such as nationalizing the media, could be immune from legal challenges based on common good or freedom of speech concerns.
- The consequence was that Parliament could enact laws without fear of them being struck down by courts, even if they infringed upon fundamental rights.
- In the Kesavananda Bharati case, the Supreme Court ruled that amendments violating the Constitution's basic structure would be void.
- Justice H.R. Khanna's opinion, with a narrow majority of seven to six, emphasized the principle of judicial review.
- He found that while the 25th amendment partially violated this principle by forbidding examination of laws related to Articles 39(b) and (c), it was upheld regarding challenges based on Articles 14 and 19.
- Interestingly, the minority judges, who believed Parliament had unlimited amending power, did not thoroughly assess the 25th amendment's validity.
- Kesavananda's verdict didn't decisively determine if the amendment, in exempting certain laws from fundamental rights challenges, violated the Constitution's basic features.

More changes

- In 1976, the 42nd amendment to the Indian Constitution expanded Article 31C, extending its protection to laws made in furtherance of any Directive Principle of State Policy (DPSP), not just Articles 39(b) and (c).
- However, in the Minerva Mills vs Union of India case in 1980, a five-judge Bench declared this amendment unconstitutional.

- Chief Justice Y.V. Chandrachud emphasized that fundamental rights (Articles 14, 19, and 21) act as a safeguard against unrestricted state power, and the 42nd amendment compromised this balance.
- The ruling raised questions about the status of Article 31C: Does it revert to its original form post-25th amendment, minus the invalidated portions, or does its validity remain uncertain?
- In the **Waman Rao vs Union of India case**, Justice Y.V. Chandrachud upheld the validity of the unamended Article 31C, suggesting that laws made in furtherance of Articles 39(b) and (c) couldn't violate rights under Articles 14 and 19.
- However, this opinion seems flawed as laws aimed at promoting the common good could potentially infringe on liberty, as seen in scenarios like nationalizing the printing press.
- In the **Property Owners case, the Supreme Court will assess the validity of a law allowing a State government board to take control of dilapidated buildings with the consent of at least 70% of residents**.
- The Court will determine if this law aligns with Article 39(b). If it does, the question arises whether the statute can also be scrutinized based on Articles 14 and 19, which protect equality and freedom, respectively.

An opportunity

- Despite previous judgments like Waman Rao and Sanjeev Coke vs Bharat Coking Coal, there's still no definitive analysis from the Supreme Court on Article 31C introduced by the 25th amendment.
- Article 31C pertains to laws made in furtherance of Directive Principles of State Policy (DPSP) and their exemption from certain fundamental rights challenges.
- The lack of clarity on Article 31C has led to ongoing conflict between fundamental rights and DPSPs.
- The Property Owners case presents an opportunity for the Supreme Court to resolve this conflict and provide clarity on the constitutionality of Article 31C.
- A decisive ruling in Property Owners could strengthen the Constitution's fundamental guarantees.

Question: Examine the evolution of the balance between Fundamental Rights and Directive Principles of State Policy in India, considering judicial pronouncements and constitutional amendments since the commencement of the constitution. (250 Word/15 Marks)

Approach:

- Give brief introduction highlighting the basic reason for conflict between FR and DPSPs.
- Give an account of the changing relationship between FRS and DPSPs due to various judicial cases as well as Constitutional amendments.
- Conclude citing the final position seeking balance between the two.

Answer:

The justiciability of Fundamental Rights on the one hand and the moral obligation of the state to implement directive principles, without them being justiciable, on the other hand have led to a conflict between the two. Since the commencement of the Constitution, the various judicial pronouncements and constitutional amendments have tried to alter the nature of relationship between Fundamental rights and Directive Principles:

Fundamental Rights supreme but amendable: In Champakam Dorairajan case (1952), the first case regarding the conflict between Fundamental Rights and DPSP, Supreme Court ruled that the supremacy of fundamental rights would prevail in case of any conflict between the two. However, it also held that the Fundamental Rights could be amended by the Parliament by enacting constitutional amendment acts to implement the Directives.

Giving primacy to human development (9 May)

Given low levels of human development, high levels of inequality, low savings, and high debt, it is time to think about an alternate growth strategy which accords primacy to human development

- Political parties are using the promise of development as a major theme in the upcoming elections.
- Looking at what has been accomplished in recent years, as shown in the Human Development Report, highlights what still needs to be done.
- It emphasizes the importance of having a clear plan in place for tackling the challenges ahead and starting on a journey toward long-term development.

A poor ranking on HDI

- Two recent reports shed light on different aspects of India's development.
- The Human Development Report 2023-24 by the UNDP compares human development achievements.
- A paper by the World Inequality Lab from March 2024 discusses long-term trends in income and wealth inequality in India from 1922 to 2023.
- Both reports indicate concerning trends in human development and inequality.
- They serve as valuable resources for guiding future government actions aimed at improving human capabilities and citizen welfare.
- These issues are central to the agendas of major political parties.
- In 2022, India ranked 134 out of 193 countries in the UN Human Development Index (HDI), showing a slight improvement from its 2021 ranking of 135 out of 192 countries.
- This improvement can be attributed to a small increase in India's HDI value, from 0.633 in 2021 to 0.644 in 2022.
- Despite the improvement, India still lagged behind countries like Bhutan, Bangladesh, Sri Lanka, and China.
- India falls within the medium human development category, along with countries like Myanmar, Ghana, Kenya, Congo, and Angola.

- One area where India showed improvement is the Gender Inequality Index, ranking 108 out of 193 countries in 2022 compared to 122 out of 191 countries in 2021.
- However, India still faces significant gender disparities, particularly in labor force participation, with a large gap between men (76.1%) and women (28.3%), amounting to a difference of 47.8%.
- The Human Development Report highlights concerns about rising inequality and its impact on human development.
- Since 2020, inequality between countries with high and low Human Development Index (HDI) scores has been increasing annually.
- This inequality is worsened by significant economic concentration, with nearly 40% of global trade in goods being controlled by just three countries.
- In 2021, the market value of the three largest technology companies exceeded the GDP of more than 90% of countries.
- The report discusses the consequences of increased inequality, noting that people in the bottom 50% income bracket have low and relatively equal control over their lives.
- However, agency (or control over one's life) increases as income rises for the top 50% of the population.
- When adjusted for inequality, India's loss in HDI is 31.1%, which is higher than several neighboring countries including Sri Lanka, Bangladesh, Nepal, and Pakistan.

Widening inequality

- The bottom 50% of India's population only received 15% of the national income in 2022-23.
- The top 1% earned an average of 5.3 million, which is 23 times the average income of an Indian.
- Average incomes for the bottom 50% and the middle 40% were significantly lower, standing at INR 71,000 and INR 1,65,000 respectively.

- The richest 10,000 individuals earned on average INR 480 million, indicating extreme wealth concentration.
- Income growth for the top decile was much higher than for the rest of the population, especially the middle 40%.
- Growth rates within the top 10% increased with rank, suggesting disproportionate benefits for the wealthiest.
- From 2014 to 2022, the incomes of the middle 40% grew slower than the bottom 50%, potentially shrinking the middle class.
- This skewed income distribution and growth pattern indicate a risk of economic polarization, dividing society into two classes: the wealthy and the impoverished.
- Household debt levels in India rose to a record high of 40% of GDP by December 2023.
- Net financial savings decreased to 5.2% of GDP.
- Unsecured personal loans saw the fastest growth among types of household debt, followed by secured debt, agricultural loans, and business loans.
- Annual household borrowings surged to 5.8% of GDP in 2022-23, the second-highest level in independent India.
- With low human development, high inequality, low savings, and high debt, there's a call for an alternative growth strategy prioritizing human development to boost growth.
- This requires political will and a focus beyond short-term electoral gains.
- As an initial step, the narrative of development needs to be reframed.

Sweltering summer lays bare chinks in Kerala's power system (9 May)

Kerala depends on electricity imports for much of its daily electricity requirement.

- Kerala is currently experiencing an unusually warm summer, leading to heatwaves in some districts.
- The heatwaves have highlighted issues within Kerala's power system that have been overlooked for decades.

- Kerala relies heavily on electricity imports to meet its daily electricity needs.
- To avoid power shortages during the summer, the Kerala State Electricity Board (KSEB), which is the state-run power utility, engages in advance power purchase agreements.
- Additionally, the KSEB enters into swap arrangements with power generators and utilities from other parts of the country.
- This year, Kerala faced unexpected challenges with its power projections due to unusually high temperatures.
- Electricity usage surged significantly, with increases of 15 to 20 million units (mu) on several days.
- In March and April, electricity consumption rose by 12.79% and 15.62% respectively compared to the same months in 2023.
- The surge in demand is particularly notable during late evening hours due to increased reliance on air-conditioners and charging e-vehicles.
- In April, the spike in peak power demand during evening hours increased by 12.38% compared to the previous year.
- Meeting this increased demand has posed significant difficulties for the Kerala State Electricity Board.
- People in Kerala expressed frustration with power outages by protesting at KSEB section offices.
- The CPI(M)-led Left Democratic Front government has faced criticism for the power supply issues.
- The Kerala government responded by recommending self-regulation to manage electricity usage.
- It ruled out imposing statewide power curbs and cyclical load shedding.
- Industries and commercial establishments were advised to minimize electricity usage between 10 p.m. and midnight.
- Domestic consumers, the majority of KSEB consumers, were encouraged to conserve electricity and shift high-energy consumption activities to off-peak hours.
- Kerala has experienced shortages in power supply, leading to the need for purchasing electricity at a high cost.
- Officially sanctioned power curbs have been rare in recent times, with shortages compensated by expensive power purchases.

- Internal power generation, primarily from hydropower, meets only 30% of the demand even in normal circumstances.
- During summer, the situation worsens, with a significant portion of electricity being imported to meet demand.
- On May 3, out of 115.94 million units (mu) of electricity consumed, only 22.75 mu were internally produced, while 93.19 mu were imported.
- Kerala, once power-surplus, now heavily relies on power allocations and purchases due to inadequate internal capacity.
- In 2023, the Kerala State Electricity Regulatory Commission scrapped long-term power purchase deals totaling 465 MW, leading to potential supply disruptions.
- The decision was reversed after controversy, but the companies involved have yet to resume supply, exacerbating the crisis.
- The Power Department of Kerala allocated a significant portion of the centrally assisted Revamped Distribution Sector Scheme funds towards smart meters rather than network improvement.
- This decision faced criticism from influential Left power sector unions.
- Sensible and balanced decision-making is emphasized as crucial to avoid significant issues in Kerala's power sector.
- The crisis has prompted the Kerala State Electricity Board (KSEB) to reassess its plans for long-term power generation and supply.
- Negative media coverage of the power situation could harm the Left Democratic Front (LDF) government's efforts to portray Kerala as an investment-friendly destination.

Power curbs may become a political issue for the opposition parties in the upcoming local body elections in 2025 and Assembly polls in 2026.

Irrational Israel: On the ceasefire proposal and Hamas (9 May)

Netanyahu is prioritising his political future over his country’s interests

- Hamas accepted a ceasefire proposal mediated by Qatar and Egypt.

- Israel rejected the proposal and announced the evacuation of over 100,000 people from Rafah.
- Israeli tanks were sent to Rafah, and Israel seized control of the Gaza side of the border crossing with Egypt.
- Gaza's situation is dire, with high casualties, displacement, and a humanitarian crisis.
- Israel's military actions are criticized, with concerns about disproportionate force and lack of progress.
- Prime Minister Netanyahu's decision to invade Rafah could have negative consequences for Israel.
- A negotiated ceasefire is suggested as the practical solution to end the conflict.
- Even Hamas has shown willingness to sign a ceasefire deal.
- The question remains whether Netanyahu is willing to pursue a ceasefire.

A sob story: On onion exports (9 May)

Restrictive revocation of onion export ban sends wrong signals to farmers

- The Indian government lifted the ban on onion exports after nearly six months.
- However, exports are subject to conditions: a minimum export price of $550 per tonne and a 40% levy.
- This decision followed another policy change just 10 days prior, allowing 2,000 tonnes of white onion exports with certification from the Gujarat Horticulture Commissioner.
- Critics argued that this move favored Gujarat's farmers ahead of the Lok Sabha vote, leading to accusations of preferential treatment.
- The government defended its decision, stating that white onions, primarily for export, have higher production costs and that allowing exports would benefit Maharashtra, the largest onion producer in India.
- Despite the permission, only a few thousand tonnes of onions were actually exported during this period.
- The conditional lifting of onion export restrictions coincides with Maharashtra's onion farming areas voting on May 20.

- The Centre justified the decision based on stable mandi prices at ₹15 per kilo since April, indicating adequate supplies, and the perishable nature of onions.
- State BJP leaders argue that this move will benefit farmers by ensuring better prices and income.
- However, the floor price plus export duty formulation makes exports viable only at or above ₹64 per kilo, posing a challenge for farmers.
- International onion prices have been decreasing after Egypt and Pakistan lifted their export curbs before India.
- The latest export norms are expected to remain in place until the next government takes charge, effectively imposing export restrictions for nearly a year.
- Balancing the interests of consumers and farmers is challenging, but policymakers should consider longer-term trends rather than opting for knee-jerk reactions.
- Before food inflation surged in the second half of 2023, onion prices had been declining for 21 months until May.
- While prices increased by about 30% in 2023-24, they had previously fallen by 21%.
- A study by the Centre for Civil Society indicated that farmers lost an average of 21% of their annual income due to onion export bans between January 2015 and March 2020.
- The current series of export restrictions, following nearly two years of falling prices, may not be conducive to encouraging farmers to sow onions, which could affect inflation control and India's goal of becoming a major food supplier.