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EPW – SEPTEMBER 2018

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1. Where the Transgender Bill Fails?

Why in news?

The Transgender Persons (Protection of Rights) Bill, 2014 though regarded as progressive, falls short of addressing many central problems.

What are the problems of the transgender community?

- **Marginalization:** The primary crisis faced by the transgender community is denial of sexual citizenship & social rejection, making them vulnerable to sexual violence & medical neglect.
- **Exclusion:** National Human Rights Commission (NHRC) has found that 92% of the community is subjected to economic exclusion. Such denial of their fundamental right to livelihood pushes them into begging or sex work.
- **Estrangement:** Only 2% of transgender persons in India live with their families resulting in lack of social legitimacy.

What are the flaws in the bill?

- The bill has neglected to incorporate two crucial recommendations made by a standing committee.
- The first recommendation made a case for **reservation** for transgender persons in educational institutions and for jobs to ensure the problem of economic exclusion.
- The second recommendation argued for a legal recognition of the rights of transgender persons to marriage and partnerships.

- It fails to define in specific terms, what counts as discrimination against a transgender person.
- It also falls short of addressing the central problem of extending sexual citizenship to transgender persons.

What should be done?

- The Centre can follow Tamil Nadu's model of offering basic affirmative measures like concessional housing, vocational training centres & free sex realignment surgery in specific government hospitals.
- Overall, the bill should integrate transgender persons & normalise their presence in public spaces, at workplaces, and in normative domestic spaces.

2. Are Sewer Deaths the New Normal?

What is the issue?

- The recent deaths of six sewerage workers in Delhi form part of a continuing series of such deaths
- However, the response of the authorities indicates a new normality.

What are the underlying problems?

- **Lack of data:** Activists rue the lack of credible data on manual scavengers. Perhaps, otherwise, there would be compulsion to acknowledge that such work actually exists.
- **Poverty:** Poverty forces these workers to descend almost bare-bodied into sewers full of



filth and excreta, fully knowing that they may asphyxiate to death.

- **Caste- Occupation nexus:** There's an entrenched association between the lowest-ranking castes and the work of cleaning other people's waste. This is despite the **Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993**, amended in 2013 that prohibits manual scavenging.
- **Neglect:** In the Swachh Bharat Abhiyan, the actual foot soldiers have got scant attention and even less financial resources than the broom-wielding celebrities and ministers.
- Even where workers have been given proper safety gear, they prefer to strip it off and work as is so heavy and unwieldy.

What are the recent developments?

- Socially conscious engineers of Kerala & Hyderabad have launched robotic machines for scavenging named "**Bandicoot**" & "**sewer croc**" respectively .
- Hyderabad Metropolitan Water Supply & Sewerage Board uses jetting machines & the Delhi government has also received action plans for mechanised cleaning of drains and sewers.

What should be done?

- There is a proposal to make "**entrepreneurs**" of **safai karamcharis** by providing them loans to buy and use sewer-cleaning machines. Since this could throw up severe difficulties for them, the state should buy these machines and employ people to operate them
- Efforts should be taken to constantly experiment and finely hone lighter safety suits.

- Widespread mechanisation of sewer cleaning can prevent human beings from stepping into the death chamber.
- Hence, the government must harness the power of technology and innovation to prevent the cruel and unnecessary deaths of the sanitation workers.

3. What Does It Take to Stabilise India's Sugar Market?

What is the issue?

- India's domestic sugar market is in the doldrums as the price of sugar in the international market has been falling.
- Managing sugar markets & balancing the interests of sugar millers as well as the sugar cane producers is a serious policy challenge before the GOI.

What are the recent developments?

- The GOI has imposed **reverse stock holding limits** on sugar mills to stabilise the sugar price due to higher projections of sugar production and high **FRP** (Fair & Renumerative Price)
- Exporting surplus sugar to the deficit region of the world could be an option. Thus, the GOI took specific measures such as increasing customs duties on sugar import from 50% to 100% and zero tariffs on sugar exports.
- To encourage ethanol production, the GOI has announced payment for sugar mills that satisfied 80% of their proposed ethanol supply obligation under the **ethanol blending programme (EBP)**.

What are the challenges?



- Increasing sugar export is not easy when the world sugar prices are sluggish.
- Diverting significant portion of the current sugar stocks to renewable fuel (ethanol) production has its own challenges with government restrictions on food-based feedstock use on energy production.
- Also there is a slightly declining per capita sugar consumption globally & competition from other technologically advanced major sugar producing countries like Brazil and Thailand.
- While growing sugar cane as a commercial crop venture could be one of the effective tools for doubling farmer income, bold policy alternatives are needed to make it a reality.
- **Lessons from Brazil:** The Brazilian government offered a significant amount of subsidy to the ethanol producers with a current blending mandate of 27%
- It also initiated the availability of E100 (96% pure ethanol and 4% water) that can only be used in flex-fuel vehicles (FFVs) which are tax incentivised.
- Majority of the sugar mills in Brazil are capable of producing both sugar and ethanol.

What can be done?

- If the Brazilian model is replicated in India that allows direct use of sugar cane for ethanol production, the E20 mandate (20% blending by 2020) can be achieved with only 1.47 million ha of additional land.
- The cane-producing farmers will see renewable-energy feedstock market as an alternative to the traditional sugar market.

- Sugar mills with ethanol production capacity could switch between sugar & ethanol & remain profitable even if there were to be a fall in the price of one of the commodities.
- Thus if implemented strategically, India's EBP could be a powerful tool to stabilise sugar & increase farmers' income as well as reduce the nation's dependency on foreign crude oil.

4. When Fuel Is on Fire

Why in news?

The persisting upsurge of fuel prices across the country brings home the government's lackadaisical attitude towards the problems that commoners encounter due to the hikes.

What are the recent happenings?

- In the face of country-wide protests by the Opposition, the central government has shifted the onus of fuel price adjustment on to the state governments.
- Except for Rajasthan and Andhra Pradesh, which have announced price, no other state has responded yet.

What are the concerns with the current pricing mechanism?

- Fuel price deregulations not only make consumers pay through the nose when global oil prices rise, it also prevents them from leveraging the benefits when prices are low.
- In India, fuel is priced as if it, and not crude oil, is imported. Though, in reality, India is a net exporter of fuel, with the export being almost 32 times the import value of fuel.
- But, premised on the misplaced assumption, the calculation of Refinery Gate Price (RGP) & hence, losses/profits of oil manufacturing



companies/refiners assign higher weightage to the import parity price of fuel.

- This, in turn, implies that whenever international oil prices rise, the oil manufacturers in India make a windfall gain.
- Concurrently, consumers end up paying a very high price, equivalent to what they would have paid had India been importing fuel instead of crude oil.
- Thus, the notional losses (profits) commonly known as “under (over) recovery” are over(under)estimations of actual losses (profits); though frequently used interchangeably with the latter.

What are the emerging concerns?

- Fuel pricing in this country is more a political statement than an economic exercise.
- Any profit above \$70 per barrel will be taxed; though it is not clear how the government has arrived at this benchmark figure.
- There is an emerging discontent within the petroleum industry that profit taxation will be prohibitive—given the already existing revenue sharing contracts with the government
- This will result in a squeeze on the capital investments (both domestic and foreign) much needed by the oil exploration industry.

5. Crop Residue Burning : Solutions Marred by Policy Confusion

Why is the issue?

In the ongoing debate on resolving the issue of crop residue burning, policy statements have created confusion.

Causes of Crop residue burning

- Paddy straw that contains silica is not considered suitable for use as animal feed and it is burnt in the fields
- As the time lag between harvesting of the paddy and sowing of wheat is only 3 weeks, farmers burn paddy straw to quickly clear their fields.
- There is a general perception among the farmers that if paddy straw is not cleared from the fields immediately, it would hamper the growth of the succeeding crop.

Consequences

- Air is polluted with gases injurious to health which makes children & the elderly prone to sickness, which often proves fatal in many cases.
- With decline in visibility due to smog, road/rail accidents also take place frequently, snatching away thousands of lives.

What is the government's response?

- The National Green Tribunal (NGT) has been issuing directions to governments of Punjab, Haryana, UP & Rajasthan which have issued orders to fine those farmers found burning crop residue.
- But, until now, these orders have been largely defied by farmers who find no other alternative to burning.
- Zero tillage technology using Happy Seeder machines or mixing of crop residue in the soil through mulching requires purchase of costly machines beyond their reach.



- The operation of these machines requires tractors with stronger horsepower than those possessed by most of the farmers

What are the other alternatives?

- There are four uses for crop residues, such as generation of power, production of cardboard & packing material, production of ethanol by fermentation, and bio-compressed natural gas (CNG).
- In addition, the agricultural research system has been working on building new machines to mulch paddy and other crop residues in the soil itself to increase fertility.

What is the policy confusion?

- First, the National policy on Biofuels does not cover support to bio-CNG produced from paddy straw in the form of MSP for straw .
- Second, a budgetary provision has been created for providing subsidy, for purchasing machinery to retain crop straw as mulch for maintaining soil fertility. This incentive is meant to discourage the farmers from collecting the straw for disposal to bio-CNG plants.
- In fact, two lobbies have become active in the region. Bio-CNG and ethanol producers want farmers to collect paddy straw from their farms to be supplied to the plant locations, while another lobby of machine sellers wants the straw to be processed in the fields itself.
- There is a lack of coordination between the Min. of Agriculture & Min. of New & Renewable Energy as policy documents create confusion among the state governments, which are supposed to tackle the issue under the directions of NGT.

What should be done?

- This is an avoidable confusion if coordination is done properly.
- A common agency like the NITI Aayog, can play this role better by involving different ministries and experts.
- The states need to be given a solution acceptable to all the stakeholders.

6. Legalising Sexualities in a Patriarchal State

What is the issue?

The 377 judgment is a massive step forward, but society has to unlearn gender roles for it to be meaningful.

What are the recent developments?

- The five-judge bench of SC, in four separate but concurring judgments, has now affirmed that LGBTQ persons are entitled to equal rights that the Constitution provides its citizens.
- However, Section 377 will continue to apply to sex with minors, animals, and to non-consensual sex.

What are the concerns?

- The recent judgment has been welcomed for its insistence on the right to dignity for the identity that one chooses for themselves.
- But, how far will the legal emphasis on “self-determination” go in helping LGBTQ persons navigate their lives in a society full of prejudices still remains a question.
- The judgment reiterates that constitutional morality trumps societal morality, but it is the latter that will determine the day-to-day



struggles of a community that defies heterosexual normativity, and hence is at increased risk of being subjected to violence and humiliation.

- Thus, Justice Rohinton Fali Nariman's judgment rightly recommends periodic sensitisation and awareness programmes for all government officials, particularly police officials.
- However, any sensitisation will be incomplete without the systematic devaluation of heterosexism, the institutionalised valorisation of heterosexual activity.
- Discrimination on the basis of sex can be both direct or indirect. It was stereotypes about gender roles that constituted the basis of criminalising same-sex relations, and which ensure discrimination.

What should be done?

- The protection granted for consensual acts in private must also be extended to public spaces where sexual minorities are vulnerable on account of their sexuality and appearance.
- Relegating same-sex acts into the private sphere would reiterate the "ambient heterosexism of the public space," and thus sexual privacy should include the expression of one's identity in public.
- Thus, nothing short of a reimagination of gender can bring about true dignity to the many citizens and genders of India.
- This historic judgment marks the start of this process.

7. 'Dalit' Cannot be Reduced to 'Scheduled Caste'

What is the issue?

The recent advice by the Ministry of Information & Broadcasting to the media to refrain from using the word "Dalit" by implication introduces a moral hierarchy in the use of words.

What are the happenings?

- Following the petition submitted by some Buddhists from Nagpur, the government argued that the word Dalit has to be avoided because it is morally offensive & the term "Scheduled Caste" is preferable as it has been given constitutionally.
- However, the Constitution has no control on the use of this term on account of it being misused by those belonging to the upper castes and who feel that they face competition from the SCs
- This misuse of the term was evident in caste slurs that were levelled at some SC students in a medical college in Delhi

Why 'Dalit' is irreducible to 'SC'?

- The Dalit Panthers in the early 1970s sprang from the inactivism of many SC politicians who did not take a public stand on the growing atrocities against Dalits. It is in this strong political sense that Dalit is irreducible to SC.
- Since the word Dalit expresses the totality of exploitation, discrimination, & patriarchal domination, it cannot be accused of posing any danger to the solidarity of the oppressed.
- Dalit is also irreducible to SC in another and perhaps more fundamental moral sense.



Unlike SC, it does not carry the burden of having to prove its authenticity.

- However, the word Dalit in its long career has faced many contestations, coming mainly from Buddhists for whom, the word Dalit is a morally offensive reminder of a humiliating past.
- The state's attempt to impose one single term on the symbolic and cultural universe of Dalits is both unfair and unwarranted.
- In fact, such legal moves as the present petition against the word ultimately empower the state to establish its monopoly over the symbolic order of the Dalits.
- This symbolic order of the Dalits includes their ideological and cultural interaction with each other as also their wider mobilisation around transformative symbols.
- This was evident in 1978 when several lakhs of Dalit Panthers had gathered for renaming Marathwada University after B R Ambedkar & the recent social mobilisation of protestors against the systemic humiliation that led to the tragic death of the scholar Rohith Vemula.
- It is in this expansive sense, therefore, that the word Dalit is irreducible to the term Scheduled Caste.

8. Role of Dams in Kerala's Flood Disaster

Why in news?

- During the recent Kerala floods basic norms were violated in the management of dams, which, if operated prudently, could have alleviated the magnitude of the disaster.

- In this context, it's important to outline a strategy for the management of dams to mitigate similar disasters

Violation of the Rule Curves

- Every dam is supposed to have a dam-specific rule curve that regulates that ensures that it is filled up only towards the end of the monsoon.
- Almost all the dams in Kerala were almost full by the end of July. This was in complete violation of the rule curve, since by the end of July the SW monsoon is just halfway through its course, and large parts of Kerala also receive the NE monsoon.
- None of the Kerala dams had manuals, EAPs, or even inundation maps as mandated by the CWC and CAG reports.

Strategy for Dam Management

- Kerala needs to update, or formulate rule curves for each large dam along with a study of the downstream channel-carrying capacity and removal of illegal encroachments.
- There should be mapping of inundation areas and formulation of standard operating procedures for different flood scenarios, including emergency action plans & coordination mechanisms.
- There should be flood forecasting that takes into account all the factors & all this information should be available daily in the public domain on a designated website at least for the next five years
- There should be a dam management committee for each dam, in which about half the persons should be non-government persons, and community representatives.



- All of this should be a statutory requirement, say, under the Dam Safety Act in Kerala, one of only two states in India to have such an act.
- Finally, Kerala should immediately set up an independent panel to review what happened during the floods and how different agencies responded, with an objective to learn lessons for the future.

9. Dissecting the Draft Labour Code on Social Security, 2018

Why in news?

While the draft Labour Code on Social Security, 2018 tries to cover over 90% unorganised workers, it still has some issues that need to be addressed.

What are the administrative challenges in the draft?

- The draft attempts **universalisation** of social security provisions for the entire working-class population, including wage earners and self-employed.
- The success of the scheme requires the active support and involvement of both employers and employees.
- **Establishment of an exclusive social security organisation** similar to IAS. However it does not include any role for trade unions, in the context of negotiation for workers' rights and benefits.
- Also, there is no specific mention of the proportion of women to be inducted.
- Trade unions must be given a wider role to realise right to information and collective bargaining for profit-sharing.
- Further, the numbers of employees' representatives & women representatives

should be increased to promote democracy & gender equality.

- The draft code mandates the creation of a three-tier structure of national, state and district-level councils, headed by the PM.
- But, it should also include a provision that grants some autonomy to states considering the diverse socio-demographic and economic development of Indian states.
- **Beneficiary identification, inclusion & coverage:** Specific & vulnerable populations such as homemakers, transgenders, sex workers, beggars or homeless persons are not included. Recognition of such groups through special registration would be important.
- Making the registration Aadhaar-based, has its own set of challenges, since the poor segments of the society are not eligible for an Aadhaar number due to lack of permanent address.
- Thus, an alternate solution of registration based any other government document like ration card or voter identity card or endorsement from the local government authority may be considered.

What are the financial challenges?

- It is stated in the draft labour code if a worker is of SEC-3 or 4(socio-economic category), the contribution to be paid is zero.
- But the main paradox lies in fixing of the rate at which the government will contribute on behalf of SEC-4.
- However, in the unorganised sectors, for the same work, different wages may prevail thus, universalising such wage differences would be another challenge.



- More than 60% of the workforce of the backward states is engaged in unorganised sectors. Conversely, these backward states also lack resources to feed such a mega share of dependent population.

What are the other challenges?

- The sudden registration of a huge number of beneficiaries in the social security net will be a huge challenge as there will be ample scope for middlemen to lure semi-literate and illiterate people.

What should be done?

- An intensive awareness campaign should be incorporated prior to rolling out the social security scheme with special focus on **maternity benefits**, so that our socio-economically vulnerable and less educated populace can claim what is rightfully theirs.
- Overall, resource-poor states that bear a larger unorganised workload burden will definitely benefit from this scheme provided that 80% is contributed from the centre, taking into account the equity principle.