RCEP Negotiations - National Data Rights

What is the issue?

- The Regional Comprehensive Economic Partnership (RCEP) trade negotiations had been held recently.
- India may accept the free data flow clauses with some public policy exceptions at these negotiations.

What is the RCEP?

- It is a trade deal that is currently under negotiation among 16 countries.
- These countries include 10 member countries of the Association of Southeast Asian Nations (ASEAN) and 6 countries with which the ASEAN bloc has free trade agreements (FTA).
- The ASEAN countries have FTAs with India, Australia, China, South Korea, Japan and New Zealand.
- Negotiations on the details of the RCEP have been on since 2013.
- All the participants aim to finalise and sign the deal by November 2019.

Why data is important?

- In a digital economy, data is the central resource.
- The Prime Minister compared data to property at the advent of the industrial era.
- Data is being considered as a nation's new wealth.
- A nation's rank in the emerging new global geo-economic and geo-political hierarchies will be decided by how it employs data fruitfully, and its value captured.
- The global digital or Artificial Intelligence (AI) economy is currently a two-horse race between the U.S. and China.
- All other countries may become fully digitally dependent on one of these two digital superpowers.
- This will compromise their economic and political independence, something referred to as digital colonisation.
- The shift to digital power and its concentration is very evident.
- Seven of the top eight companies by market cap globally today are data-based corporations, mostly U.S. or China-based.

What is the importance of data sharing?

- To escape such a dismal situation, credible efforts like in the French, the U.K. and India's NITI Aayog's AI strategies are taken.
- All these efforts focus on one central issue - More data-sharing within the country, and better access to data for domestic businesses.
- **French AI strategy** - Calls for an aggressive data policy and control on data outflows.
- **NITI Aayog's AI strategy** - Mandated the sharing of data for social purposes.
- Appropriate data policies must ensure that the required data is actually available to Indian digital businesses.
- The global digital corporations such as Google, Facebook, Amazon, etc continually vacuum out India's and Indians' data.
- By default they also treat the data as their private property and refuse to share it, even for important public interest purposes.

What is a Community data?

- The above-mentioned lawless logjam can only be broken by asserting a community's legal right over data that is derived from, and is about the community concerned.
- This is the concept of community data inscribed in India's draft e-commerce policy.
- Data about a group of people is equally important as the personal data.
- Data about a community, even if anonymised, provides very wide and granular **intelligence about that group or community**.
- The very basis of a digital economy is to employ such data-based intelligence to reorganise and coordinate different sectors.
- But this community intelligence can equally be used to **manipulate or to harm the community** (economic, social, political, security-related harms).

What could be done to protect the community data?

- This requires effective **community control over its data** that produces such intelligence.
- A complex process of **classification** of various kinds of data, and developing **governance frameworks** around them, is required.
- In important sectors, the community data concerned may require **close regulation**.
- This could be about accessing such data for social purposes, ensuring that important public interest is met in various uses of data.
- It could also be about how to make data available to domestic businesses, to

stimulate competition and for India's digital industrialisation.

- All this requires India to **preserve its data policy space**.
- It needs to be understood that **suitable data controls and policies** are the mainstream of a digital economy and society.

Why shouldn't India accept the free data flow clauses?

- The history of trade agreements show that such public policy exceptions almost never work, especially for developing countries.
- India may lose chances for the effective usage of its data for development of India and for digital industrialisation to become a top digital power.
- It may end up ceding most of its data policy space, and data sovereignty.
- Disengaging from signing binding agreements on uninhibited data flows across borders doesn't mean that a country would localise all data.
- It just means that a country retains complete data policy space, and the means to shape its digital industrialisation, and thus its digital future.
- It will be laying the path for permanent digital dependency, with India's data flowing freely to data intelligence centres in the U.S. and China.
- Our understanding in these areas is just now beginning to take shape.
- It will be extremely unwise to foreclose our options even before we discover and decide the right data and digital polices and path for India.

Source: The Hindu

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