Opinion

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POWER OF TRUTH

Narendra Modi, prime minister of India

"When lies are spread all around, the biggest weapon will only be truth. Truth, truth and only truth can defeat the tsunami of lies"

Some reassurance, some rhetoric from PM

Waiting for SC outcome on Ayodhya welcome, as is not pushing farm loan waivers; statement on RBI unconvincing

AT A TIME when many felt the government would push the building of the Rama temple at Ayodhya in order to attract votes, it is reassuring to hear prime minister Narendra Modi tell *ANI* that he will wait for the judicial process to be over; only after this would he contemplate anything. And he did well to point out that the Congress has tried to delay the proceedings. While condemnation of anti-Muslim rhetoric and lynching in the name of protecting cows is a line Modi has taken before, his inability to ensure that states ruled by the BJP—UP and, at that time, Rajasthan—were able to deliver on it is worrying. Indeed, the *gau rakshak* movement—and the draconian cattle-trading rules that emanated from it—are hitting even Hindu farmers who need to dispose off their cows after their productive years are over. Reassuring Muslims, and the non-fanatics among Hindus, will take more than just statements, and farmers who are facing a problem in terms of crop prices not being remunerative must view the cattle restrictions as a double-whammy; it is unclear if UP's cow-cess to take care of cows abandoned by hapless farmers is going to help reduce the farmers' anger.

Modi is right to point out that loan waivers haven't helped farmers—apart from the final waiver being a fraction of what was promised—but while he talked of the need to give farmers better market access and better infrastructure, including seeds, there is little on the ground to show for this. Apart from the fact that BJP states like UP and Maharashtra have also promised large loan waivers, Modi's MSP promise never really took off and market prices are 20-30% below MSP. And while the Shanta Kumar panel recommended moving to acreage-based cash transfers in 2015, Modi didn't act on this or move towards replacing wasteful farm subsidies—around ₹2 lakh crore annually—with cash transfers of around the same amount. So, while he was right to dismiss the Congress talk of loan waivers as 'lollipops', he has not offered a workable alternative so far.

Not surprisingly, given all the black money came back into the banking system, Modi just repeated his rhetoric on the need for demonetisation; he wasn't questioned on the need for it since, with GST, much of the informal sector would have come into the tax net anyway. While Modi was right to dismiss the criticism of GST—introducing a tax that strikes at the heart of tax evasion isn't easy and takes time to settle—his plan to raise the exemption limit to ₹75 lakh is a bad one and will increase evasion (*goo.gl/NYnwNi*). And, while having a single rate may have been more efficient, finance minister Arun Jaitley's deft handling of the GST Council—all decisions so far have been unanimous—has ensured we are moving in that direction, even if a bit slowly.

Modi is right to worry about his middle class voters, but while inflation-control benefits the middle classes, as do more medical seats—he even mentioned the encouragement to start-ups—education reforms mostly remain a non-starter and a lot more reforms are required for both growth and jobs to pick up. The PM suggesting that Urjit Patel wanted to resign anyway, and that no pressure was put on him, is unconvincing. If anything, it suggests the government has been trying to get the RBI's reserves and getting RBI to relax PCA and other norms for even longer than what was originally believed. The fact that so many of the government's schemes, like subsidised housing, LPG, insurance, etc—Modi mentioned some of them—have not made as much of a difference to the electorate is genuinely puzzling. One possible explanation is that the *gau rakshak*/lynching rhetoric—and the BJP's hollow promises on MSP, etc—has tilted the narrative against the BJP. By how much, and whether Modi can reverse this in the next few months, remains to be seen, but it cannot be done without a burst of reforms.

Related, not together

Planned changes to Sec 29A will fix grey areas in IBC law

GIVEN HOW POWERFUL industrialists hoodwinked the banking system for decades, by not repaying loans and forcing banks to evergreen them—usually by using political contacts—it is not surprising that when the government was drafting the Insolvency and Bankruptcy Code (IBC), it made sure that such individuals were not allowed to bid for the companies they ran. If this was not done, these defaulters would be able to buy back their companies—in the IBC process—at discounts upwards of even 50-60%. The manner in which such defaulters were kept out was Section 29A of the IBC. Classes of people who could not bid included insolvents, people whose loans were classified as NPAs or who were willful defaulters. Even "connected persons", or relatives in a broad sense, were excluded since the easiest thing for a defaulter would be to bid via a company owned by some relative.

It was because of this clause that, for instance, ArcelorMittal was forced to pay ₹7,000 crore of dues of Uttam Galva before it could bid for Essar Steel—in this case, LN Mittal was a promoter of Uttam Galva. This was also the reason why Numetal was not allowed to bid for Essar Steel since the principal shareholder of Numetal, Rewant Ruia, was the son of Ravi Ruia, one of the promoters of Essar Steel.

The government, as *FE* reported, is planning a change in Section 29A since the clause is also being misused to delay IBC proceedings. In the case of LN Mittal's ArcelorMittal, one of the issues raised by Numetal was that the Mittal brothers—Pramod and Vinod—were defaulters, so ArcelorMittal needed to pay these dues also before bidding. That would normally have made sense, but the brothers split their businesses decades ago. The new relaxation will allow bidders to show that, while they are related to defaulters, their businesses are quite distinct.

Theoretically, should such a relaxation be made, Numetal can be allowed to bid if Rewant Ruia doesn't have a shareholding in Essar Steel. Yet, as the Supreme Court judgment in this case showed, this is not necessarily true. In this case, the SC showed that while Numetal was owned by two companies—AHL and AEL—AEL sold its shareholding in Numetal to two trusts whose beneficiaries were companies owned by Rewant's father Ravi and his uncle Shashi Ruia. Also, as the SC pointed out, the day before the government brought in the law to debar defaulters, part of the shareholding in Numetal was sold to some Russian firms to distance the Ruias from Numetal; this is why, while the Ruias were not in control of Numetal at the time of the bidding, the original promoters were 'acting jointly'. This puts a big responsibility on the resolution professional whose job is not only to ensure defaulters don't sneak into the bidding process, it is also to ensure the clauses are not used to unfairly keep non-defaulters out.

FacebookFlagging

Facebook's suicide-screening efforts sound admirable but, mired in a lack of transparency, they do little to restore its credibility

AROUND THE WORLD, a suicide occurs every 40 seconds—and suicide is the second-leading cause of death for 15- to 29-year-olds, as per WHO data. Facebook, the social media giant that is being investigated by regulators the world over, has been, since the latter half of 2017, using algorithms and user reports to flag possible suicide threats. Facebook's algorithms scan posts, comments and videos of users for indications of immediate suicide risk. When a post is flagged, by the technology or a concerned user, human reviewers at the company who are empowered warn local law enforcement. The *New York Times* reports that possible suicide threat alerts have been sent to police officers from Massachusetts to Mumbai and, in a Facebook post in November, Mark Zuckerberg said the new tool has already intervened about 3,500 times.

Facebook, for "privacy reasons", doesn't track the outcomes of its calls to the police. And it has not disclosed exactly how its reviewers decide whether to call emergency responders. Therefore, the public does not know what information Facebook collects, how it perceives threats, and whether its actions are appropriate given its estimations of risk. Neither is there an option for all users—suicidal or otherwise—to opt out of data collection. Four police reports from four Facebook-flagged suicide threats obtained by *The Times* show that only one case was deemed actionable. While Facebook's capacity to effect a positive change—in terms of curbing suicides—is significant, its efforts need to be transparent and open to scrutiny. After all, there are health researchers out there who are transparently attempting to study suicide risk such as the US's department of veterans affairs that is using AI to study and analyse retired army personnel medical records. In an environment where trust in the social media giant is faltering, it is likely that Facebook's recent efforts will do little to bolster its image.

GST ADVANCE RULINGS

A GST ALLOCATION IS NOT REQUIRED TO BE MADE FOR HUMAN RESOURCES COSTS SINCE EMPLOYEES HAVE A RELATIONSHIP WITH THE LEGAL ENTITY (AS A WHOLE) AND NOT WITH ANY ONE BRANCH

Karnataka AAR wrong on GST on HR cost

RANJEET MAHTANI
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IN THIS FESTIVE season, on the one hand the GST Council is resolving the industry's GST concerns, besides recommending rate reduction on several products, and, on the other hand, the saga of revenue-favouring advance rulings continues.

Industry's latest nemesis is the ruling rendered by the Karnataka Appellate Authority for Advance Ruling (KAAAR) that affirms the ruling of the Karnataka Authority for Advance Ruling (KAAR) in the matter of Columbia Asia Hospitals Pvt. Ltd. The assessee-company operates hospitals (branch offices or BOs) in several Indian states and has, as part of the registered unit in Karnataka, an India management office (IMO). The IMO handles certain operations such as accounting, administrative functions, maintenance of IT systems, etc, for which it incurs costs. Chiefly for ascertaining the profitability of each operating unit, such IMO costs are allocated to other units, including BOs in other states (cross charges), and GST is applied.

The IMO also incurred human resources costs that were not allocated to the BOs since the human resources belonged to the legal entity and all its BOs, and did not apply any GST on such amount on the basis of the legal provision that transactions between employer and employee is not a supply of both goods and services.

The KAAR held that the assessee-company is legally obliged to apply GST on the human resources costs allocated to registered units ("distinct persons") in other states. The KAAAR upheld the ruling on the reasoning that employer-employee relationship should be viewed separately for every registered unit/BO of the legal entity.

The authorities have addressed this issue with an extremely obtuse approach, while brushing aside certain judicial precedents and established legal principles, so as to garner greater tax. Some aspects that require deeper contemplation are described here:

■ The true nature of the transaction was not understood. It is undeniable that the services of an employee are outside the pale of GST and, so, cannot be taxed. Due to this advance ruling, the IMO is to pay tax on an element (human resources costs) that has been consciously kept outside the ambit of GST, given that the law provides that services by an employee to its employer in the course of or in relation to his employment is not a 'supply'.

For the external expenses of IMO which were allocated, there was no supply in the economic sense yet, due to applicable legal fiction, GST was liable to be paid on transactions *inter se* IMO and BO. Such allocation is not required to be made for human resources costs since employees have a relationship with the legal entity (as a whole) and not with any one branch. To require the IMO to apply GST even where 'supply' is not made is legally incorrect.

> The advance ruling stretched the GST law so as to obfuscate the basic position that employee's services are toward the legal entity and thus not regarded as a supply

■ Employment contracts equally permeate all BOs of the company. The Supreme Court, in *Agencia Commercial International*, declared that BOs are not distinct and separate entities from a head office, (in this case IMO) but rather, they constitute components through which the corporate entity expresses itself. So, a BO does not have a separate legal existence but is cut from the same legal fabric (juristic person), i.e., the company.

In the context of labour laws as well, the Supreme Court, in *Transport Corporation of India*, recognised that: "...leaves no room for doubt that the branches of the appellant, though spread over different parts of the country, are part and parcel of the main establishment of the company which remains the 'employer' and the employees in different branches remain its 'employees'." An employee is hired by a legal entity (company), and directed to provide services from any office including those situated in another state. Therefore, an employee's obligation under the relevant contract is towards the company, irrespective of where they are deputed. To this effect is the unequivocal finding in the *Milind Kulkarni* case by the CESTAT, that employees of a branch are the employees of a company-organisation.

■ The advance ruling notes that employee's services are not to be taxed yet and peculiarly observes that employees are that of a single registered unit in a given state (in this case IMO), and, so, when their (employees') activities benefit another BO, the transaction is one between 'distinct persons' and is exigible to GST, even if no consideration is paid. The advance ruling unduly stretched the deeming fiction in GST law so as to obfuscate the basic position that employee's services are toward the legal entity (as a whole) and thus not regarded as a supply.

■ The advance ruling has not accorded due effect to the non-obstante clause in Section 7(2) of the CGST Act, 2017.

An advance ruling does not bind any other person apart from the person who sought it, but it reflects the mindset of the GST authorities. Upon application of this ruling, trade and industry will have a greater cash outgo (by applying GST on such human resource transactions) and in several situations, there will be sticking cost owing to non-availability of input tax credit (ITC), as also burden assesses with additional compliance. Businesses will have to carefully evaluate its structures and transactions to adopt suitable mitigation.

Given the controversial position, which artificially raises tax costs for businesses, the GST Council should issue a binding clarification, as it has in the recent past, and alleviate the concern at hand.

Co-authored by **Nischal Agarwal**, senior associate from Dhruva Advisors LLP.

Ensuring a level e-com playing field

A compliance certificate needs to be issued not after a review of documents but, actually, a due diligence since most of the new rules are implementation-specific rather than form-specific, which can be reviewed and opined on

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RECENTLY, THE NORMS with respect to FDI in e-commerce were revised. The revised norms came in the backdrop of objections raised by retailers and traders against e-commerce entities with foreign funding primarily against the following practices: (i) predatory pricing and loss funding; and (ii) web of preferential sellers created by such dominant e-commerce players. The changes in the e-commerce policy seek to address some of the concerns.

Prior to analysing the key impacts, the success of any law and/or policy lies in its implementation. The present regime, as it stands, is that, under FEMA, there is no provision of filing a complaint by a private party. While representations are made in case of FDI violations to the Enforcement Directorate (ED), it is ultimately up to the ED's discretion to take cognisance of a matter.

Thus, it has been widely deliberated that there is an urgent need for an e-commerce policy/regulator which would address the entire booming e-commerce landscape, establish fair and non-discriminatory norms and establish an e-commerce regulator with enforcement powers to enforce the said policy.

Now, turning our attention to the changes in the policy, a few of the key changes include: (a) no control over inventory by e-commerce entities; (b) if a market place entity or group companies have any equity participation or control over the inventory of an entity, then that entity is barred from selling its products on the platform run by the e-commerce entity; (c) services to the vendors selling goods on the platform would be on a fair and non-discriminatory basis; (d) no exclusive mandate to sellers; (e) annual reporting to RBI by a statutory auditor confirming compliance of the norms.

While the changes seek to address the entire *modus operandi* of the dominant e-commerce players, these still have loose ends since the entire thrust of the present changes lies on the ambit and interpretation of control. The aspect of control must be seen dehors the aspect of equity participation since these are disjunctive terms used in the changes.

The ambit of control is broad, since an entity may be in control over another entity in practice by way of multiple agreements like exclusivity, services agreement, common directorship or any other means even when the equity participation may be minimal. The changes in the policy sought to keep a tab on the innovative structures that have been floated by companies which may have defeated the implementation of the policy.

Also, the policy seeks to suggest that the services must be given to vendors on a non-discriminatory basis. One of the services which is very important but often not spoken about is the placement of the goods of vendors on the e-commerce websites.

> The new e-commerce policies still have loose ends since the entire thrust of the proposed changes lies on the ambit and interpretation of regulatory control

For example, if you want to buy an iPhone on a prominent e-commerce website, the top searches coming on the first page would be of vendors with whom the marketplace entities may have an arrangement, while other vendors with similar ratings and quality would not get this advantage.

This is very important since it has been proved with consumer surveys that 60-70% of the purchases on e-commerce websites (especially of white goods) are from vendors which come in the first page. Now, this aspect of display and marketing would also have to be given by marketplaces to vendors on a fair and non-discriminatory basis. Keeping the same in mind, it is time to evaluate all vendor arrangements.

Lastly, what is notable and fascinating is that the policy mandates that an auditor would have to give a certificate of compliance every year. While the aspect of a compliance certificate is common under Indian laws, this is slightly different since, now, an auditor would have to review the business practices and review agreements to check compliance of a law. Such a certificate would need to be issued not after a review of documents but, actually, a due diligence since most of these rules are implementation-specific rather than form-specific which can be reviewed and opined on (like having a FC-GPR, FC-TRS form, etc). The role and responsibility of the auditor may be spelt out in the e-commerce policy. Can they be held liable as "officer in default: In case of a violation"?

All in all, this policy has been welcomed by traders: However, the key lies in implementation and ensuring a fair and level playing field. One should watch out for this space.

LETTERS TO THE EDITOR

Smriti deserves accolades

Talented India vice-captain Smriti Mandhana deserves rich accolades on being adjudged the 'women's cricketer of the year' as well as the 'women's ODI player of the year' by the ICC. The double honour is a rare first for an Indian woman and is a befitting recognition for the wonderful show that she put up last year in international cricket. Mandhana had struck it rich, scoring 669 runs in 12 ODIs along with 622 runs in 25 T20 internationals in 2018. One hopes that she goes on to bag more laurels for the country in the coming years

— Ravi Chander, Bengaluru

Save seller, from seller

While the revised FDI policy, aimed at establishing truly impartial marketplaces/platforms, can level the playing field by facilitating offline/online retailers to bolster their presence and enjoy a decent market share, it is more important to enforce the amendments on the ground and develop a redressal mechanism in the event of a non-compliance. It is also required to preserve consumer interest and buyer sentiment. Standardisation across the supply chain can limit malpractices viz. preferential treatment towards vendors, aggressive selling by related entities and exploitation of the e-commerce platforms. With investors/stakeholders usually wary of potential jitters and lower margins, primarily on account of huge capital investments by enterprises, micro-regulation can prevent opaque pricing and sustain competitiveness in the fast-growing e-commerce markets. It is prudent to surmount impediments of predatory pricing strategies to preserve the quality of goods and offset the mounting inflationary pressures in the economy

— Girish Lalwani, Delhi

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CLIMATE TALKS

Was COP24 able to achieve its objectives?

The language of the Rulebook that emerged in Katowice is rather weak and vague. It provides many loopholes to rich nations to dilute their historical, moral and social responsibility towards poor developing nations. Although the Rulebook has been accepted by all the nations, demonstrating the spirit of belief in multilateralism, developing nations are not fully satisfied—the Katowice Rulebook clearly isn't a step forward in operationalising the Paris Agreement

THE 24TH CONFERENCE of the Parties (COP24) to the United Nations Framework Convention on Climate Change (UNFCCC) concluded on December 15, 2018. Held in Katowice, Poland, its aim was to finalise guidelines for the implementation of the Paris Agreement post 2020. These guidelines are called the 'Paris Rulebook'. India was at the forefront of the negotiations as a leading developing country, as it was a 'make or break' moment for all poor developing nations and least developed countries, including small island nations.

At the outset, the UNFCCC's executive secretary outlined three broad segments of the objective—adapting to climate change, mitigating emissions with ambitious targets and ensuring means for implementation such as availability of adequate finance, innovative technology transfer and building of capability, and capacity of poor nations to take proper action. The expectations of any major breakthrough in these areas appeared low because the US—the world's second-largest polluter after China—reiterated its earlier decision to pull out of the Paris Agreement at the G20 summit in Buenos Aires (Argentina), which was held just before the start of COP24. There were other major disappointments, too—Brazil's strongman president Jair Bolsonaro had promised his voters to follow the US's lead on climate change during his election campaign. The French President Emmanuel Macron expressed his inability to attend COP24 due to anti-government protests by the 'yellow vests' in his country, which sprang up over imposition of diesel tax. Also, rich EU nations generally and rich oil-exporting countries like Saudi Arabia, Kuwait, Russia and the US did not show concerns about the vulnerability of poor developing nations to climate change. This means that the rest of the world will have to strive to meet climate goals on its own.

Against this backdrop, let us examine what really happened in Katowice, which, incidentally, is a coal-mining city of Poland and two major coal companies, ironically, had also sponsored this event. The salient features of the Rulebook prepared in Katowice are the following:

The Rulebook smartly welcomes the bringing of the Intergovernmental Panel on Climate Change (IPCC) report titled 'Global Warming of 1.5°C' on time but, at the same time, does not accept its findings. This clearly means that we ourselves are surely preparing a stage for more than 3°C rise in global temperatures, which would be simply disastrous. It needs to be noted here that even comprehensive progress on the Intended Nationally Determined Contributions (INDCs) of countries would not be enough to prevent runaway global warming. Voluntary contributions may have to be tripled for restricting temperature rise to 2°C, and for 1.5°C they have to be five times. Thus, while science is so clear on global warming, global consensus on how to tackle it remains elusive. This is a big setback to all developing nations, including the African Group of Negotiators (AGN) and the Alliance of Small Island States (AOSIS).

Regarding finance for adaptation, the Rulebook says that developed countries are not expected to indicate how much would be as 'grants' or 'loans', except that a substantial part of funds would be grants-based funding.

Concerns remained unresolved on climate finance contributions from Annex II countries (which include the US, the EU and Australia) in 2016, which were estimated at $38 billion, but which is less than even 40% of the $100 billion per year that was the target in the Paris Agreement and whether they would come good on their promise in later years. Further, there is an entire ecosystem of issues under Article 9 of the Paris Agreement (not only confining to Clause 9.5) to operationalise including an important issue of progression because just $100 billion will not do forever. In this respect, the Rulebook does talk about setting up a new collective finance goal post 2025, which would be higher than $100 billion per year. Whether and how it would happen, only the future will tell.

Although 'loss and damage' will be part of the 'global stock' plan, the Rulebook turns a blind eye on how the finance will flow from developed countries and what will be the methodology to deal with the losses due to ill-effects of climate change on poor vulnerable nations.

There also remained a major contention on trade in carbon market mechanism, which is to be finalised this year.

The Katowice package sets out rules and procedures on how information on INDCs would be provided by the nations, which would include details on mitigation measures along with financial support received by developing and least developed countries. However, the rules don't provide enough clarity about the complicated procedure followed on the flow of climate finance from developed to developing countries because of sufficient variation in the levels of development of the latter.

> Even an extensive progress on INDCs won't be enough to prevent runaway global warming. Voluntary contributions have to be tripled for restricting temperature rise to 2°C; and for 1.5°C, they have to be up to five times

The principle of common but differentiated responsibilities and equity is lacking in the global stock process—a five-yearly review of the implementation of the Paris Agreement. This basically means that developed countries take the lead, while developing and other poor countries also take action according to their capacities.

In view of the above facts, it appears the wordings or the language of the Rulebook that emerged in Katowice is rather weak and vague. It provides many loopholes to rich nations to dilute their historical, moral and social responsibility towards poor developing nations. Although the Rulebook has been accepted by all nations, demonstrating the spirit of belief in multilateralism, developing nations are not really satisfied. In such a scenario, can we say that Katowice Rulebook will prove a step forward in operationalising the Paris Agreement? The answer is clearly 'no'.

NBCFDC

Saving the needy from loan sharks

RC ACHARYA
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A corporation is making loans available to the needy at nominal interest rates

AT A TIME when a lot of media attention is on agri-distress emanating out of debt traps faced by farmers paying, in some instances, close to 100% interest rates, there are a few less-talked-about narratives of financing being made to the needy at concessional rates. The National Backward Classes Finance & Development Corporation (NBCFDC), under the ministry of social justice & empowerment, is one such body quietly ushering in a revolution by catering to backward classes, who, as per the NSS, form 50-60% of the population.

Charged with the laudable objective of disbursing loans to those having annual family income less than ₹3 lakh and to whom banks would normally lend at a commercial rate of 11%—if at all a collateral is available—while loan sharks would fleece them, the NBCFDC makes loans available at a mere 3.5-7% rate of interest. This is even lower for women at 5% and 4% for self-help groups (SHGs).

Set up in 1992 under Section 25 of the Companies Act, 1956, the NBCFDC has, by judicious financial management, been able to disburse ₹4,362 crore as loans, with only ₹1,314 crore share capital received over 26 years. Significantly, over last four and a half years, it has disbursed ₹1,786.71 crore, which is almost 41% of all loans disbursed since it came into existence. States that nominate their finance corporations as state channelising agencies (SCAs) are the ultimate guarantor for the loan, resulting in the NBCFDC's record of loan recovery being around 95%. However, with some SCAs defaulting and some not extending guarantees, the NBCFDC has started relying on public sector banks (PSBs) and regional rural banks (RRBs) to act as its alternate channels.

Those eligible for the scheme are urban or rural members of OBCs as appearing either in the State or the Central list, with an annual family income below ₹3 lakh. With a view to improving accessibility of the financing scheme for urban migrants, the NBCFDC accepts caste certificates issued by the state of their domicile. For establishing annual income, self-certification that is duly endorsed by a gazetted officer or even the branch manager of the bank sanctioning a loan has made this task much simpler. A maximum of 85% of the project cost for term loans of up to ₹10 lakh is made to the beneficiary, with the SCA picking up the tab for the balance 15%, so that they remain in the loop.

> Success stories of the NBCFDC may not hit the headlines, but do lead to a significant change in the lives of the rural as well as urban poor

Of the four main areas for loans—agriculture and allied activities, transport and services sector, technical and professional trades/educational loans for professional courses, and loans for small business/artisan and traditional occupation—the last is the most popular. It is the most desirable as it helps generate jobs when a business venture takes off.

Significant steps have been taken by the NBCFDC to make its loans in agricultural and allied activities more accessible and effective. Loans can now be availed in convergence with other schemes of the government, such as NABARD loans, some of which come with a 30-35% capital subsidy. Combining this subsidy with the concessional interest rates of the NBCFDC has enabled disbursement of ₹25 crore in Uttar Pradesh by the Gramin Bank of Aryavart.

In another major simplification of procedure, the NBCFDC has allowed automatic categorisation of landless agricultural labour, marginal and small farmers belonging to OBC, as ascertained by banks, for disbursal of loans under agriculture and allied activities.

Success stories may not hit the headlines, but do lead to a significant change in the lives of the rural as well as urban poor. Reportedly, women in Tamil Nadu and Kerala have been able to make optimum use of the Mahila Samridhi Yojana (a microfinance scheme for women) of ₹60,000 at a mere 4% per annum interest, with the NBCFDC funding 95% of the project cost. Also, under the New Swarnima scheme, women of the target group can get a loan of ₹1 lakh at a nominal rate of interest of just 5% per annum, with the NBCFDC funding 95% of the project cost. Not a bad deal.

INDUSTRIAL DISPUTES ACT

Don't tinker with Chapter V-B

It's time to move away from this economically-irrelevant and socially-costly reform agenda

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EVER SINCE THE government introduced wide-ranging economic reforms, employers and critics of labour regulation—including the World Bank and IMF—have been persistently lobbying the government (both the Centre and states) for reforming labour laws and the labour inspection system. This relentless lobbying has especially targeted Chapter V-B of the Industrial Disputes Act, 1947. They argue that labour laws in general and this chapter in particular tie down the freedom of employers from quickly and suitably responding to ever-changing market forces in an intensely competitive world.

Owing to strident opposition by trade unions at least at national level, it remains non-amended, though few state governments like Rajasthan and Assam have amended the ID Act. Let us delve a little deep into this controversy and even assess the legitimacy of employers' demand.

Chapter V-B of the ID Act was introduced in 1976 and it applied to industrial establishments employing 300 workmen on an average per working day for the preceding 12 months. By an amendment in 1982 (with effect from August 21, 1984), the threshold was reduced to 100 workmen, which currently is in force in the Central Act. The recommendations by some committees and demands for reform of this chapter range from its total repeal to narrower thresholds of 1,000 to 300.

Industrial establishments, as per the chapter, cover only factories, plantations and mines registered under their respective Acts and exclude construction and services sectors. Prof TS Papola and his colleagues estimated that the ID Act was technically applicable to 5.5% of the total workforce and 12.1% of hired workers in 1999-2000. It is not difficult to see that these numbers may be lower even now. Further, the Sixth Economic Census data show that establishments employing 10 or more workers in 2013-14 in manufacturing and mines accounted for just 2.05% of total establishments in the non-agricultural sector. At the same time, if we consider size-wise distribution of factories in the manufacturing sector and apply the suggested threshold of 1,000 workers, the non-covered factories will be huge (around 98%) and non-covered workers will be around half of the total; in case of 300, the relief will be only marginal to the employers. So, the numbers don't justify the social costs arising out of reform controversy.

The term "workmen" used in the chapter should naturally include all those who are covered by the definition of "workmen" [vide S.2(s) in the Act]. I have a strong and informed hunch that not only academics but also employers do probably labour administrators interpret "workmen" for Chapter V-B purposes only permanent workers, which is patently wrong as the chapter does not, as in the case of industrial establishments, specifically define "workmen" for the application of it.

This point is evident from the recent case of closure of Racold factory in Pune. The company reduced the workers' strength from around 750 to reportedly 90 permanent and 40 temporary workers. The company has probably gone by the strength of permanent workers and hence it is reported to have abruptly closed it down. Even assuming that this is an illegal closure, the penalty is ₹5,000 and/or six months' imprisonment. The reality here is that the employer is often the aggressor and workers are left with litigation option, which will be a long battle.

A parroted argument for removal or liberalising the chapter is the government, for political reasons, hardly sanctions closure or retrenchment. But this is not supported by hard data concerning patterns and trends in the post-reform period. The Labour Bureau data on closures are useless—they do not tell us the rate of rejections/permissions of employers' applications for closure/retrenchment. In my rather dated research concerning Maharashtra, I found during the first half of the 2000s the government has been appreciative of employers' concerns as reflected in reasonably higher sanction rates of closures. Press reports in the 2000s are awash with closures, retrenchments and layoffs, and relocation of firms in pursuit of labour flexibility and absence of trade unions.

The assessment of the impact of labour law and governance reforms by VV Giri National Labour Institute (in 2017) concluded that the reforms did not boost investment nor generated jobs. Former labour secretary M Sathiyavathy also sounded sceptical of the investment effects of reform of Chapter V-B in the states where it was effected.

Governments have sought to introduce reform of Chapter V-B heeding to severely-contested prior-driven econometric studies, which argued that lack of labour flexibility hurts growth, employment, poverty alleviation. But the Enterprise Surveys by the World Bank in 2014 show that most employers do not consider labour regulations as a constraint in conducting their operations. This should not shock us as, by now, it must be evident that employers do enjoy considerable labour flexibility. This what studies by Prof Lalit Deshpande and Prof Papola—based on firm-level or state-level data—have clearly established. Even the government has admitted we have moved away from long-term employment to short-tenure jobs. States that scored high on ease of doing business in terms of ensuring labour flexibility arguably do not stand higher in economic parameters. The faults lie elsewhere, surely.

Social and economic costs on the battles in the labour market will perhaps far outweigh potential marginal benefits that would have been accrued if the amendment of threshold to 300 for this chapter were to have been implemented. It's time to move away from this economically-irrelevant, socially-costly reform agenda.