Yet another ruling on director liability

Unless the culture of compliance seeps into enforcement, judgments would be mere essays

WITHOUT CONTEMPT

SOMASEKHAR SUNDARESAN

The Supreme Court has spoken yet again — quashing criminal proceedings initiated against the managing director of a company that runs a hotel in New Delhi — about the liability of a managing director in a company charged with crime for no reason other than his being the managing director. Yet, whether this would lead to any reform in the conduct of enforcement agencies is a question that could end up being rhetorical.

The facts seem straight out of the movie October. A visitor to the hotel fell from the sixth floor to the fourth floor. It was found that a terrace next to the club lounge on the sixth floor was often used as a smoking area, with the hotel not stopping smokers from using the place. The charge was that the hotel did not take adequate precautions to maintain safety.

The managing director was charged on the grounds that he was the only executive director of the company, he chaired all board meetings, and he would therefore, be responsible for all acts of omission or commission by his officials. Indeed, employees involved in hotel operations were charged too, but the managing director had been roped in as an accused only for the reason that he was the chief executive. The Delhi High Court refused to quash the proceedings at the request of the managing director. The Supreme Court disagreed.

The law declared by the Supreme Court is that before issuing summons to an individual as an accused, the criminal court is required to be satisfied from the material on record that the person named as the accused needs to be proceeded against. If the court does not find adequate material to rope in an individual as an accused, but later during trial finds material to rope in a person not hitherto named as an accused, it can rope in the accused at that stage too (Section 319 of the Criminal Procedure Code). Yet, summons do get routinely issued against every person named by the prosecutor.

Summons can also get issued after a judge decides that the person named as an accused must be tried for criminality. In the case at hand, indeed, the Delhi High Court agreed that it was rightly issued. All that the charge sheet stated as the ground to rope in the managing director was that he is responsible for the overall operations of the company, and being the only executive director, he would be the accused. It would also imply that if there were other executive directors, they too would have been roped into the proceedings.

The situation gets even more complex with quasi-civil proceedings, conducted by regulators who have the role of legislature, executive and judiciary, all rolled into one organisation. Recently, the Securities Appellate Tribunal was faced with an appeal where the capital market regulator routinely directed all directors to personally refund money raised without issuance of a prospectus. The tribunal has declared the law unequivocally — indeed also relying on Supreme Court judgments — to rule that liability under the law cannot arise merely by designation but from the responsibility and role played by the individual at the relevant time. Implying that "vicarious liability" cannot be automatically imputed, in the absence of a shred of evidence that the individual in question was responsible.

In fact, the Companies Act, 2013, the post-Satyam corporate law that raises the bar of criminality under company law to the level of anti-drug trafficking law when it comes to bail where fraud is alleged, took care to stipulate that for charging a director, one must apply one's mind to knowledge and involvement applying "board processes". Regulations governing listed companies' obligations made by the capital market regulator too lay down the standard of having to determine knowledge and involvement by applying board processes.

When a director sits on the board of a company, she necessarily has to rely on the processes necessary for the board of directors to be briefed by the management. If the director on the board is unaware despite doing all that a reasonable person would to make herself aware of the goings on in a company, the law would not permit the director to be charged in any proceedings. Yet, in practical application, this standard gets diluted. Enforcement agencies prefer to "err on the side of caution" and rope in everyone they can lay their hands on, leaving the burden of correcting the error to the judicial system. More judgments can follow on the subject, but unless the culture of compliance seeps into enforcement too, these would merely be essays to be relied on after the judiciary has already been burdened with the task of correcting the errors of the enforcement agencies.

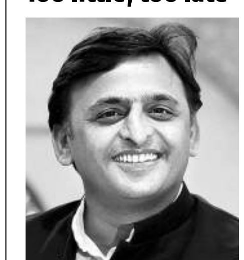
The author is an advocate and independent counsel. Tweets @SomasekharS

CHINESE WHISPERS

Vanishing group of ministers

National broadcaster All India Radio (AIR) on Wednesday afternoon tweeted that the government had constituted a "GoM", or group of ministers, to look into issues concerning Jammu and Kashmir. The tweet, with the hashtag "Article 370", came a little after 2 pm. It fuelled speculation about the ambit of such a "group of ministers". However, nearly two and a half hours later, government sources denied that any "GoM" was constituted. "Reports about the government setting up a GoM on issues relating to Jammu and Kashmir are not correct," a government source said. Some also wondered how AIR could do this without official confirmation.

Too little, too late



After facing a near wipe-out in the 2019 Lok Sabha polls, followed by a string of senior leaders, including legislators, deserting the party, Samajwadi Party President Akhilesh Yadav (*pictured*) has decided to dissolve all state- and district-level committees in Uttar Pradesh. Barring UP unit President Naresh Uttam Patel, the former chief minister sacked all other office-bearers. As expected, there is a lot of unhappiness because of this. But a section of the party feels Yadav's move was long overdue and should have taken place much earlier or immediately after the Lok Sabha elections. With three sitting Rajya Sabha members crossing over to the BJP recently, there has been much damage, both to the organisation and member morale, they said, and that his "surgical strike" might be "too little, too late".

Reading between the lines

Union minister and senior Bharatiya Janata Party (BJP) leader Prakash Javadekar was left fumbling for words on Wednesday. At a BJP press meet, Javadekar launched on Congress leader Rahul Gandhi for his comments on Kashmir, which, he said, "insulted" the country and had given Pakistan "a handle" to target India at the United Nations. Gandhi had tweeted about "violence and people dying" in Kashmir, which Pakistan included as part of its petition in the UN to attack India over the situation in the Valley. Javadekar demanded that Gandhi apologise for what he termed the "most irresponsible politics" the country had witnessed. Gandhi's tweets on Wednesday, attacking Pakistan and asserting that Kashmir was India's internal issue, were made due to public anger over his earlier comments, Javadekar said. He wondered if Gandhi's mindset had also changed due to the change in his constituency. When asked to clarify what he meant by his comments about "Rahul's constituency", Javadekar first struggled to explain himself and then said his remarks were not about the constituency but its representative. Gandhi represents the Wayanad constituency in the Lok Sabha. He had represented Amethi for 10 years between 2004 and 2014.

The à la carte approach to economic advice

The set-up in Modi 1.0 and 2.0 is geared to sector-specific guidance rather than macro-economic counsel

SUBHOMOY BHATTACHARJEE

As the economy's numbers point to a large-scale slowdown it is important to focus on the men and women advising the government, specifically Prime Minister Narendra Modi. Both his predecessors, Manmohan Singh and Atal Bihari Vajpayee, had trusted confidants as their chief advisors: Former Reserve Bank of India Governor C Rangarajan for Singh and Vijay Kelkar for Vajpayee. The former became chairman of the Prime Ministers' Economic Advisory Council (PMEAC), after Suresh Tendulkar quit in 2009. Kelkar often described himself as *paramarshdata* (advisor) in the finance ministry in North Block but his views were often solicited by Vajpayee from across the road in South Block.

Among those who advise Prime Minister Narendra Modi on economic policies, there is no such clear hierarchy. So there is no concept of a confidant in economic spheres unlike, say, the role National Security Advisor Ajit Doval plays in steering the security of Jammu & Kashmir.

The economic advisors to the Modi government are, instead, more transactional in their role, their importance based on the programme or policy on hand that is sought to be steered. For instance, Parameswaran Iyer, the bureaucrat in charge of Jal Shakti Abhiyan, the water conservation mission, was also the author of the government's massive project to tackle India's water crisis through a set of interventions. The closest someone could come to Rangarajan or Kelkar's position in this government is former RBI Governor, Bimal Jalan. But he, too, has been discreet, offering counsel only on specifics. Other than the report on the RBI's capital reserves, which was put up to its board on Monday, he has authored a report on expenditure management, which the government never made public but has acted on in many cases.

It is no secret that the prime minister prefers not to surround himself with economic advisors. His signature economic policies rarely carry the overt imprint of any particular advisor or group — unlike, say, that of the National Advisory Council in the rural employment guarantee programme in Manmohan Singh's government. This predilection has had a discernible impact on the government's handling and defending of macroeconomic issues. Examination of macro-economic themes has been at a premium in Modi 1.0 and 2.0. When someone has chosen to do so, the markets were caught unawares. Last week, for instance, the Deputy Chairman of Niti Aayog, Rajiv Kumar, talked of an "unprecedented situation for the government [in the] last 70 years... [we] have not faced this sort of liquidity situation where the entire financial sector is in churn and nobody is trusting anybody else". Kumar's remarks caused the markets to slide because they were unsure if this was the final commentary on the current economic situation or there was more to come.

The reason for the surprise is that between Rajiv Kumar's Niti Aayog and the PMEAC with its five members, it is unclear who has the last word on any macro-economic issues. Part-time Council member Rathin Roy recently raised a debate about whether the Indian economy has reached its limits in terms of expanding consumption, posing it as a structural slowdown since much of the demand for goods and services is confined to a thin upper crust. Another member, Ashima Goyal, has argued that the present slowdown of the economy is largely due to cyclical factors (though she concedes some structural hurdles remain). PMEAC chairman Bibek Debroy has not waded into the debate significantly except to point out that India is yet to become a middle income economy with its attendant problems. It is not known, if this random public airing of concerns has something to do with the Prime Minister's Office (PMO) not tuning in to the debate on macro-themes, except on occasions such as the run-up to the Budget, when a group of economists met Modi for one whole day.

In any case, Kumar's statement, which he claims was misinterpreted, has renewed thinking within the top levels of PM's team about the futility of listening to macro-economic suggestions and instead entrusting the work of advice on sectoral issues to those who will be responsible for running specific projects. So the task of defending programmes such as the GST package, the Insolvency and Bankruptcy Code, the Jan Dhan project, Mudra, Direct Benefit Transfer, housing, electricity and LPG for all, and crop insurance and the pension schemes for the informal sector have all been entrusted to bureaucrats responsible for implementing them. For example, the task of defending demonetisation in Modi's first term was the remit of Shaktikanta Das in his capacity of secretary, economic affairs, instead of the chief economic advisor Arvind Subramanian. Again, GST was implemented and defended by then revenue secretary Hasmukh Adhia.

Niti Aayog, under its CEO Amitabh Kant, has rarely commented on these programmes *ab initio*, examining them only after launch. For example, Ratan Watal, the other member of the PMEAC, chaired the committee to review the framework for digital payments, rationalisation of autonomous bodies of the central government and the transformation of India's gold market, none of them macroeconomic themes.

As a departmental secretary pointed out, this government is keen to listen to the debates that are "finite and quantifiable". From the debate on employment, the Modi government picked up the need to quickly reorganise employment statistics and has begun issuing those from the provident fund scheme every month.

The government is happy to listen to the bimonthly commentaries from the RBI when it resets interest rates, usually in lockstep with the government's thinking. It would similarly adhere to the award of the 15th Finance Commission headed by N K Singh and take on board its comments. But it sits ill with the advice of Chief Economic Advisor in the finance ministry, Krishnamurthy Subramanian, who highlighted the discrepancy in tax estimates in his first Economic Survey. As Finance Minister Nirmala Sitharaman said in Parliament, the Survey enjoys an arm's length separation from the government's examination of policies of specific ministries. It is unlikely that the PMO will listen in except when there is a specific solution on offer.

INSIGHT

The do-no-harm principle

DHIRAJ NAYYAR

The government's decision to change its mind on what were quite apparently counter-productive economic policy measures — such as the surcharge on FPIs and the criminalisation of CSR commitment violations — shows that it is willing to listen. One cannot be sure what triggered the change, whether it was the falling stock market, acute discomfort of industry and even pro-government commentators, or the Prime Minister's Independence Day speech in which he batted for wealth creators by calling wealth creation a national service. If India is to indeed make the "big leap" that PM Modi promised on August 15, one should hope that the government was reacting to its leader.

Prime Minister Narendra Modi has the right instincts on economic policy. Often, he has spoken on the need for the government to get out of business, ease red tape and respect entrepreneurship. At the same time, he has argued in favour of a bigger and more effective role of government in ensuring that basic goods and services reach the poor. Unfortunately, the machinery of government does not always follow these principles. The fact is that the Government of India is a large beast with several layers of bureaucracy which is minded to do its own thing, ministries batting for their own interests and battling to retain their turfs, powerful interest groups influencing (mostly legitimately, occasionally illegitimately) the making of policy. Sure, the prime minister presides, but not everyone in the system is either philosophically or practically aligned. Bad policies can slip through the cracks.

It would, therefore, be very useful and productive if all policies drafted by any department of the government are automatically subject to passing the test of the principles laid down by the prime minister. Call these the do-no-harm principles. There are three which the PM has stressed: A. Wealth creation is a national service; B. The government has no business to be in business; C. The government should ensure ease of doing business and ease of living of citizens. Every cabinet note that is drafted seeks various justifications for a policy being proposed. It should have one section on how the proposed policy fares on these three principles. If it violates any of these principles, it should be reviewed to see if it can be improved or it should be junked. Even Budget proposals should be tested on these principles. Decisions like the surcharge on the super-rich, or indeed on FPIs can be pre-empted at an early stage.

If the government is feeling bold about a "big leap", it should review all the major economic/socio-economic policies made in the last decade and see whether they pass the do-no-harm principles. Those which do not should be revised or removed. After all, the challenge in India isn't just making new policies but also ensuring that deadweight baggage from the past is jettisoned.

There is an additional principle, which has not been on Prime Minister Modi's list of mantras but which would be a welcome inclusion. The government should not focus on revenue generation and gathering; it should focus only on growth. If the Ministry of Finance is driven by the Department of Revenue and its annual tax (and non-tax) collection targets, there will be serious negative side effects. The most obvious one is tinkering with tax rates, usually upwards, using surcharges and cesses. The second is harassment of taxpayers as taxmen try to squeeze the last paisa out of the minority who comply with the law. The third is perverse non tax revenue measures like forcing one public sector company to buy another, which is faux strategic disinvestment because it brings none of the efficiency gains from the transfer of management control to a private party or independent board. If anything, it adds to inefficiency by burdening better public sector companies with less efficient ones. All of this may help the government meet its current fiscal target but it comes at the cost of growth. Would it not be so much better to abandon revenue collection fundamentalism and focus on growth? The revenue that will accrue on account of higher growth will far exceed any temporary squeezing exercise.

A country which has made very effective use of an overarching, no-harm-principle in recent times is Bangladesh. The country, which was once considered a basket case, has now emerged as a mighty player in the global textiles market (apart from seriously improving its human development). The textiles sector is the major source of growth, jobs and exports for the country. Conscious of this, the government tests every economic policy against its potential impact on the textiles sector. Any policy that would negatively affect textiles is discouraged.

Of course, India can never be a one-sector economy. But if it does make some high principles non-negotiable, it would be much better placed to make a big leap than it is today.

The author is chief economist, Vedanta

LETTERS

Look before you leap

This refers to the editorial "No windfall" (August 28). I agree that the transfer of this large amount should not be seen as a windfall gain and should be used wisely. It should be used for public investment to revive the economy; for example, in the improvement of the infrastructure and carrying out substantive reforms in areas like labour, land etc. The amount should not be wasted to run moribund public sector entities such as Air India. Also it should not be frittered away in prepoll bonanzas considering some state Assembly elections are coming up in the next few months. In case a part of the money is used to re-capitalise the public sector banks (PSBs), it should be done alongside substantive governance and operational reforms of these entities. Merely recapitalising them without initiating substantive reforms will amount to encouraging reckless lending and inefficient functioning.

There should be more substantive efforts to transform PSBs into professionally run, profitable entities. The government must not forget that the money it has received from the Reserve Bank of India as the owner of the central bank is, in fact, taxpayers' money.

Arun Pasricha New Delhi

Where is Naresh Goyal?

This refers to "Goyal structured schemes to siphon off funds" (August 25). It is now crystal clear that Naresh Goyal is not as naïve as he is projecting himself to be. The Enforcement Directorate (ED) has reportedly got evidence that Goyal had siphoned off large amounts of money in foreign jurisdictions by creating a number of tax-evading schemes. The ED has taken possession of various incriminating documents. It is also emerging that either Goyal or companies controlled by him may have routed inflated commission to its own group entity in Dubai. What does all this indicate? Does this in any way show him as an honest businessman or a kind-hearted employer who has great sympathy for his employees?

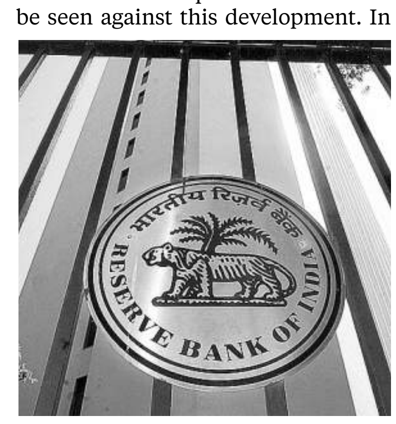
My question to readers and followers of the Jet Airways episode is, how long will the country tolerate these types of fugitives? Yes, I repeat, he is a fugitive. He has violated the FEMA rules and there is enough evidence for him to be booked under the anti-money laundering provision. Also, he hasn't paid his employees their dues and has defaulted on bank loans.

I am aware that one of his attempts to flee the country was foiled but there is nothing in the public domain about his current whereabouts. If he is in this country, my appeal to the legal fraternity is please get hold of him, prosecute him and allow the law to take its own course in a time-bound manner. It will reinforce the credibility of the law enforcers in the eyes of the public. We hope Goyal will not be allowed to take asylum in another country to spend the rest of his life peacefully.

Sanjoy Dutta Kolkata

Govt must reciprocate

This refers to the report "RBI approves a record ₹1.76 trillion surplus transfer to government" (August 27). The Reserve Bank of India (RBI) with active support from former governor Bimal Jalan and ex-deputy governor Rakesh Mohan graciously handled a tough situation. The new Economic Capital Framework, recommended by the Jalan panel and accepted by the RBI, should convince and satisfy all stakeholders. It may be recalled that RBI's reserves, which had peaked to 11.9 per cent of the balance sheet size in 2009, has been depleting since then and is now touching 5.5 per cent. The Jalan panel recommendation to maintain reserves at 5.5-6.5 per cent level has to be seen against this development. In



the central bank's eagerness to support the GoI, the level has been maintained at the minimum. The government should welcome this gesture and, in the coming years, reciprocate by helping RBI to augment its reserves. Ideally, RBI's share capital should be raised from the present level of ₹5 crore to the equivalent of $100 billion or upwards.

M G Warrier Mumbai

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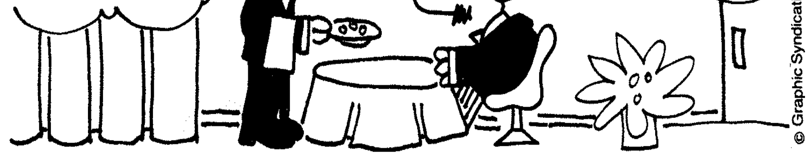
HAMBONE



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Protecting privacy

Data must be treated as personal property of an individual

Justice BN Srikrishna made a telling point recently at a symposium marking the second anniversary of the Puttaswamy judgment which affirmed that privacy was a fundamental right. He said given the parliamentary majority the ruling party enjoys, it should have been possible to pass the data privacy legislation that a committee headed by him drafted, "with the same ease that cash is withdrawn from an ATM". But it has been two years since the Supreme Court recommended specific legislation to protect privacy, and over a year since the Srikrishna Committee submitted its recommendations, and draft legislation, and there has been no movement in terms of turning that draft into law, even though a number of other legislation has been passed by Parliament at an impressive speed.

This is unfortunate as in the absence of a specific privacy protection law on the lines proposed by the Srikrishna Committee, it is difficult to prevent privacy being breached in practice. In this two-year period, there have been multiple disturbing developments that have impacted privacy. For example, the DNA Profiling Bill has been cleared and there are grey areas in that legislation. DNA is not only sensitive personal data — it can uniquely impact the privacy of persons related to the individual whose DNA is stored and tested. The government has also proposed the bulk sale of automobile registration lists, and driving licence data from state motor vehicles departments, to private sector entities. Aadhaar has been linked to income tax returns despite being supposedly voluntary. There are also proposals to link Aadhaar to electoral rolls, which may result in voters being profiled in unconstitutional ways.

There are multiple public interest litigations currently being heard in various courts proposing that Indians should be forced to link Aadhaar to their social media accounts and to the usage of instant messaging services. The petitioners, including the Tamil Nadu government, claim that this would be effective in curbing the spread of fake news. Whether that is true or not, the loss of anonymity on social media would inevitably result in curbs on free speech. The privacy of citizens who may express unpopular opinions, or indulge in acts of whistle-blowing, would no longer be sacrosanct. Any democracy, which recognises privacy as a fundamental right should give primacy to those freedoms and seek other ways to combat fake news.

There will soon be other privacy issues as the ecosystem of the Internet of Things (IoT) proliferates. Given that a fridge, air-conditioner, or car may now see, hear, record and transmit private conversations, privacy breaches will, in fact, become even more egregious in the near future. Legislation must be "future-proofed" to deal with fresh challenges on the IoT front. These examples should make it clear that it is necessary to balance multiple considerations when it comes to privacy. Data is indeed digital gold, and a national resource. All manner of public services can be enabled by data, and all sorts of business models can be based on data. But data must be acknowledged as the personal property of the individual generating it, and it should not be gathered, stored, or used without the informed consent of those individuals. Until there is a specific privacy legislation built upon that foundational principle, the Puttaswamy judgment of August 2017 will mean very little in practice.

The price of controls

Price caps on sanitary products and hand washes are counterproductive

The National List of Essential Medicines (NELM) committee would be ill-advised to bring sanitary products, adult diapers and hand washes under price controls. As with the caps imposed on essential medicines and consumables, the NELM committee is probably motivated by the praiseworthy objective of making these products more accessible to poorer households. On the face of it, this move makes sense: The National Family Health Survey (NHFS) of 2015-16 shows that about only 57.6 per cent of Indian women of reproductive age use sanitary products (48.5 per cent in rural India and 77.5 in urban India). As for hand washes, other surveys have shown that about a fifth of sample sizes cite lack of soap as a reason for not washing their hands after defecation or outdoor manual work. These numbers are unquestionably high, and the societal and health consequences of non-usage of sanitary products and soap are serious. The question is whether price control alone is the optimum approach to these problems. From the supplier point of view, price controls on a range of products from safety blades, milk and life-saving medicines to cement and tyres remain a testimony to the chronic shortage economy that characterised India in the long decades of planning. Indeed, a 2013 decision to put prophylactics under price controls saw a sharp drop-off in sales. The decision was struck down by the court later, and caused the National Pharmaceutical Pricing Authority to extend price controls by making an absurd differentiation between ordinary condoms and those with "special features". Either way, family planning objectives are unlikely to be met.

In both sanitary products and hand washes, the lifting of licensing controls saw an explosion of choice and, in the case of the former, innovations for women, especially in the workplace. It is nobody's case that more Indians should be blocked from access to such products. The issue is whether affordability is the sole factor hampering wider usage. In the case of soap, NGO surveys suggest that ignorance and access to washing facilities (such as a toilet) play as big a role in usage as affordability. In sanitary products, availability could be an additional hurdle rather than affordability alone — the NFHS shows that rates of school or work absenteeism owing to menstruation is roughly the same as the rates in Singapore and Australia. Fixing these problems may demand imagination rather than the hatchet of price controls. Education on basic hygiene is the most important of them. Enhancing distribution is another. In an earlier era, the government leveraged the vast reach of FMCG companies such as ITC, Brooke Bond, Lipton and Hindustan Lever (the later now part of the Hindustan Unilever stable) to distribute its "Nirodh" brand of condoms to meet family planning objectives. There is no reason it cannot encourage similar distribution tie-ups for private sector manufacturers. Including such objectives under the CSR mandate would be one way of putting a flawed law to good use.

Simple economics suggests that greater distribution and usage will automatically lower prices. Then again, NGOs such as Goonj, started by Ramon Magsaysay award winner Anshu Gupta, pioneered a low-cost, reusable, environmentally friendly sanitary product made from waste cloth that is uniquely suited to the needs of low-income working women. Replicating models using such age-old methods would be the best advertisement of India's indigenous capabilities for innovation.

ILLUSTRATION: BINAY SINHA

Is stakeholder capitalism back?

There are reasons to believe that corporate leaders renouncing shareholder primacy are being a little disingenuous

JOSEPH E STIGLITZ

For four decades, the prevailing doctrine in the US has been that corporations should maximise shareholder value — meaning profits and share prices — here and now, come what may, regardless of the consequences to workers, customers, suppliers, and communities. So the statement endorsing stakeholder capitalism, signed earlier this month by virtually all the members of the US Business Roundtable, has caused quite a stir. After all, these are the CEOs of America's most powerful corporations, telling Americans and the world that business is about more than the bottom line. That is quite an about-face. Or is it?

The free-market ideologue and Nobel laureate economist Milton Friedman was influential not only in spreading the doctrine of shareholder primacy, but also in getting it written into US legislation. He went so far as to say, "there is one and only one social responsibility of business — to use its resources and engage in activities designed to increase its profits."

The irony was that shortly after Friedman promulgated these ideas, and around the time they were popularised and then enshrined in corporate governance laws — as if they were based on sound economic theory — Sandy Grossman and I, in a series of papers in the late 1970s, showed that shareholder capitalism did not maximise societal welfare.

This is obviously true when there are important externalities such as climate change, or when corporations poison the air we breathe or the water we drink. And it is obviously true when they push unhealthy products like sugary drinks that contribute to childhood obesity, or painkillers that unleash an opioid crisis, or when they exploit the unwary and vulnerable, like Trump University and so many other American for-profit higher education institutions. And it is true when they profit by exercising market power, as many banks and technology companies do.

But it is even true more generally: The market can drive firms to be shortsighted and make insufficient investments in their workers and communities. So it is a relief that corporate leaders, who are supposed to have penetrating insight into the functioning of the economy, have finally seen the light and caught up with modern economics, even if it took them some 40 years to do so.

But do these corporate leaders really mean what they say, or is their statement just a rhetorical gesture in the face of a popular backlash against widespread misbehaviour? There are reasons to believe that they are being more than a little disingenuous.

The first responsibility of corporations is to pay their taxes, yet among the signatories of the new corporate vision are the country's leading tax avoiders, including Apple, which, according to all accounts, continues to use tax havens like Jersey. Others supported US President Donald Trump's 2017 tax bill, which slashes taxes for corporations and billionaires, but, when fully implemented, will raise taxes on most middle-class households and lead to millions more losing their health insurance. (This in a country with the highest level of inequality, the worst health-care outcomes, and the lowest life expectancy among major developed economies.) And while these business leaders championed the claim that the tax cuts would lead to more investment and higher wages, workers have received only a pittance. Most of the money has been used not for investment, but for share buybacks, which served merely to line the pockets of shareholders and the CEOs with stock-incentive schemes.

A genuine sense of broader responsibility would lead corporate leaders to welcome stronger regulations to protect the environment and enhance the health and safety of their employees. And a few auto companies (Honda, Ford, BMW, and Volkswagen) have done so, endorsing stronger regulations than those the Trump administration wants, as the president works to undo former President Barack Obama's environmental legacy. There are even soft-drink company executives who appear to feel bad about their role in childhood obesity, which they know often leads to diabetes.

But while many CEOs may want to do the right thing (or have family and friends who do), they know they have competitors who don't. There must be a level playing field, ensuring that firms with a conscience aren't undermined by those that don't. That's why many corporations want regulations against bribery, as well as rules protecting the environment and workplace health and safety.

Unfortunately, many of the mega-banks, whose irresponsible behaviour brought on the 2008 global financial crisis, are not among them. No sooner was the ink dry on the 2010 Dodd-Frank financial reform legislation, which tightened regulations to make a recurrence of the crisis less likely, than the banks set to work to repeal key provisions. Among them was JPMorgan Chase, whose CEO is Jamie Dimon, the current president of the Business Roundtable. Not surprisingly, given America's money-driven politics, banks have had considerable success. And a decade after the crisis, some banks are still fighting lawsuits brought by those who were harmed by their irresponsible and fraudulent behaviour. Their deep pockets, they hope, will enable them to outlast the claimants.

The new stance of America's most powerful CEOs is, of course, welcome. But we will have to wait and see whether it's another publicity stunt, or whether they really mean what they say. In the meantime, we need legislative reform. Friedman's thinking not only handed greedy CEOs a perfect excuse for doing what they wanted to do all along, but also led to corporate-governance laws that embedded shareholder capitalism in America's legal framework and that of many other countries. That must change, so that corporations are not just allowed but actually required to consider the effects of their behaviour on other stakeholders.

The writer, a Nobel laureate in economics, is University Professor at Columbia University and Chief Economist at the Roosevelt Institute. He is the author, most recently, of People, Power, and Profits: Progressive Capitalism for an Age of Discontent. *©Project Syndicate*

Trade wars can be lost. Guess by whom?

CLAUDE SMADJA

Guess what? Trade wars are not "easy to win". They even might be lost. Donald Trump is beginning to have a sinking feeling about this possibility after a bad week. There has been, first, the announcement of new tariffs of $75 billion by Beijing on American imports. This was in retaliation to Mr Trump's announcement of 10 per cent tariffs on the remaining $300 billion Chinese-made consumer goods not yet hit by tariffs on September 1 and December 15.

The move by the Chinese leadership is quite worrisome for the White House: It shows, first, that Xi Jinping is not ready to bend to US pressures. Second, and more importantly, he is playing Trump at his own game and turning the tables on him: The US President is shaping his re-election campaign around the theme that he is the leader making America great again and that he is the one who is — at long last — dealing successfully with the China challenge. However, the moves taken by Beijing are aimed at having a cumulative impact: On the one hand, hitting hard at core support constituencies of the President — hence the new tariffs on agricultural and farm products and the reinstatement of tariffs on cars and auto parts; on the other hand, increasing concerns about a trade-induced recession. The sharp fall of the markets after the announcement of the Chinese tariffs showed that Beijing is doing a good job in that domain.

Then the G7 was another illustration of how much the Trump administration is isolated in its trade war against China. Even Boris Johnson, the UK Prime Minister, preferred ally of Mr Trump, was compelled to state his opposition to trade wars. Of course, the American President enjoys on many occasions showing that he does not care being isolated. But in the present context this isolation can only weaken Washington's hand towards Beijing.

Last but not least was the succession of news showing that Trump can use all the superlatives he wants about the state of the American economy, but this does not prevent the slowdown of activity and the prospects of a recession in 2020 becoming increasingly evident. And this might be what could sink the President's re-election hopes. Media reports and leaks from the White House have been mentioning that people close to Mr Trump are increasingly concerned that the continuation of the trade war and its increasing impact on investment and economic activity could at some stage create irreparable damage to the President. His erratic behaviour, such as the repeated offer to buy Greenland, or his Twitter "ordering" (sic)"Our great American companies to immediately start looking for an alternative to China, including bringing your companies HOME and making your products in the USA", is setting new heights in the kind of volatility and impulsiveness that has been a hallmark of this presidency.

The increasing concern about an economic evolution that could ruin his hopes of winning a new mandate in November 2020 has made Trump mention the possibility of new tax cuts to stimulate activity — at a time when the federal deficit is skyrocketing — and unleash the most virulent attacks against Jay Powell, the Chairman of the Federal Reserve, accused of being "a bigger enemy than China". Which will remain as a unique episode in the history of the relationship between the White House (or any administration) and the Federal Reserve.

However, to the President's chagrin, Mr Powell has been undeterred by this kind of attacks. He, like other governors of the Federal Reserve and most of the central bankers, continues to point out that the uncertainties generated by the White House trade policy — not only against China but also against Mexico or EU countries — are a major reason for the weakening of the world economy. And Mr Powell made it very clear that it was not the job of central banks to run trade policy, and that monetary policy was of limited usefulness for countering the negative impact of trade wars.

Donald Trump tried to cheer up the markets by declaring at the end of the G7 that China wanted to resume the trade negotiations. But Beijing has been completely silent about such a thing. And when the White House tried to use a statement by Vice Premier Liu He that "China is willing to resolve issues through consultation and cooperation (…) while resolutely opposing the escalation of the trade war" to support its assertion, experts were quick to point out that this is the kind of standard statement emanating from Beijing from the beginning.

To make matters worse some people around Trump are seemingly operating under two wrong assumptions: They think they can use the troubles in Hong Kong to pressure Xi Jinping in the trade negotiations. In reality, it is exactly the opposite as events there convince the leadership that it has to stand firm against foreign pressures when its existential interests are at stake. The same people also consider that the approach of October 1, 2019, the 70th anniversary of the foundation of the People's Republic of China, might prompt Beijing to be more flexible to clear the trade conflict before the big event. This is again wishful thinking: It is not at the moment that Xi Jinping wants to celebrate the great rejuvenation of China under his leadership, and the restoration of its status "close to the centre of the global stage" that he can afford to look like he is bowing to the pressure of countries seen as trying to contain China's rise.

Yes, trade wars are not so easy to win and might even be lost.

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Seva as political strategy

BOOK REVIEW

NILANJAN MUKHOPADHYAY

More than a hundred years ago, a 24-year-old nationalist Maharashtrian, pursuing medicine at the National Medical College, Calcutta (now Kolkata), joined a band of volunteers from Ramakrishna Mission. They headed to Bardhaman, about 100 km from the burgeoning metropolis, because rural hinterlands there had been inundated once again by the "Sorrow of Bengal" — the Damodar river. A doctor in the making, he was not only equipped to rescue people from the rampaging waters, but also treat patients afflicted by the outbreak of a cholera epidemic. The time he spent among flood victims encouraged him to make volunteerism an annual habit.

Thereafter, for as long as he was in Calcutta, the young man joined the medical corps at the Gangasagar fair held every winter at the confluence of River Ganga and the Bay of Bengal. Although he was faithful to the *bhawna* or sentiment of service or *seva*, he realised that such volunteering to help people affected by natural calamities or outbreaks of disease enabled one to build personal relationships and provided an entry point when canvassing for a cause or idea. This man, Keshav Baliram Hedgewar, in 1925 established the Rashtriya Swaymsevak Sangh (RSS), which partially grew out of a different sort of volunteerism — providing security to Hindus who wanted to take out a religious procession with full *band baja* through Muslim colonies. The idea of using *seva* or service as a ploy to engage with people on socio-political ideas and beliefs emerged from such activities and explains why *seva* has always been integral to the Sangh's activities.

In *Disaster Relief and the RSS*, which examines a relatively less emphasised aspect of the RSS' activities, which is one of the primary reason for the immense popularity that it has acquired, Malini Bhattacharjee points out that the founder was "perhaps the first leader during the period (1920s and 1930s) to seriously shape the idea of *seva* as a means for constructing the Hindu Rashtra". For Hedgewar, a powerful India of the future was dependent on the military regeneration of people and "*seva* played a key role in this imagination."

Volunteerism indeed played important roles throughout the rise of the Sangh Parivar, and these experiences steeled young *swayamsevaks* for tougher tasks ahead. In his youth, before becoming fully a part of the RSS, Prime Minister Narendra Modi joined volunteers to work with flood victims in Surat. He told this writer that in the 1960s he was "quite active in social work. When I say social work, I do not mean in the manner it is understood now — this NGO business." The premium placed on volunteerism by the RSS is evident in the current *sarkaryavah* (the second in command), Bhaiyyaji Joshi, who was former head of the organisation's *seva* division.

The Hindu Right's volunteerism played an important role during the Partition riots and was instrumental in the RSS' swift spread in north and west India. In a display of exemplary dedication, the *swayamsevaks* worked day and night with Hindus uprooted from West Punjab and, to a limited extent, East Bengal, who had lost family members and all their possessions.

The author delves at length on disaster relief, examining the involvement of faith-based organisations — Swami Vivekananda played a key role in developing this facet of Hindu religious organisations — such as the Red Cross Society, which spawned similar bodies. Ms Bhattacharjee brings in perspective from the ground through interviews with *swayamsevaks* and others. Besides the theoretical portions, which explore what constitutes *seva* and how this was used by the RSS in nation-building, the book has valuable case studies of the RSS' relief efforts in Odisha after the 1999 Super Cyclone and its involvement in the reconstruction of Kutch in the aftermath of the 2001 earthquake. RSS volunteers succeeded in establishing contact with a wide spectrum of people, and during the course of relief work "new *shakhas* mushroomed in the villages of coastal Odisha" where the RSS had little association until then.

The author notes the Odisha cyclone struck within a few months of murder of Australian missionary Graham Staines and his sons by a Bajrang Dal activist. The epic natural disaster provided an opportunity to shift focus from allegations over the Sangh's role in the murders, to the dedication of *swayamsevaks* after the cyclone. The author's scholarly approach successfully establishes how humanitarism opens up the political space and opportunities that RSS used successfully. She also establishes that the idea of *seva* as structured in the RSS, although evolving from ancient Hindu precepts of *dana*, is a constantly evolving form of social engagements. But most importantly, the book establishes the success of RSS in utilising disaster situations, which warrant *seva* activities, as opportunities for political mobilisation.

Nilanjan Mukhopadhyay is a journalist and author. His latest book is RSS: Icons of the Indian Right. He has also written Narendra Modi: The Man, The Times *(2013)*

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Malini Bhattacharjee
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