Opinion

THURSDAY, SEPTEMBER 12, 2019

TACKLING TERROR
Prime Minister of India, Narendra Modi

"The whole world needs to take a pledge and stand up against those who give shelter and training to the terrorist. India is very much capable of tackling the menace on its own"

It's not just about RCEP, it's about local reforms process

India can push for a later date to have zero duties for Chinese imports, but it can't afford to not be part of FTAs

THE GOVERNMENT MAY well be right when it says that most of the FTAs that India has signed so far have resulted in the trade deficit rising. In FY19, India's trade deficit with Asean was $21.8 bn, $12.1 bn with South Korea, and $7.9 bn with Japan. It is for this reason that the government is being cautious in signing an agreement with the Regional Comprehensive Economic Partnership (RCEP), whose members include all 10 Asean countries, South Korea, Japan, Australia, New Zealand and China. The biggest worry here, of course, is what happens to India's imports if duty levels come down to zero; as it is, India's trade deficit with China was a high $53.6 bn in FY19. Evocative as the numbers are, however, they are really just a statement of fact; they don't really tell you much about whether the deficit is the result of the FTA, or whether it is due to some other reason, like India's poor trade competitiveness. India's deficit with China, after all, is very high even without an FTA; this probably has as much to do with India's uncompetitiveness as it does with China's unfair trade practices.

India's trade negotiators are, at the same time, also arguing that if China does not give India genuine access after the country signs on to RCEP, India would prefer to stay out. This is shooting India in the foot. The very purpose of the negotiation is to ensure that countries like China give India genuine concessions, and every treaty will have safeguards to prevent its abuse; if, after signing onto RCEP, China doesn't give India genuine access, there will be a provision to raise duties on Chinese products, or take other action. So, this cannot be a good enough reason for India not to be a part of RCEP; indeed, it will be unfortunate that, at a time when global trade is increasingly taking place between economic partnership areas/zones, India will not be a member of one of the biggest such zones. India is, at this point, working on reviewing its Asean FTA, and there is no clarity on how soon, if at all, India will be able to sign such agreements with either the EU or the US since there are points of significant difference between the two areas/nations, like access to agriculture goods, whiskeys/wines and automobiles. As it happens, in the case of RCEP, several members have asked India to stop dilly-dallying, and to decide on whether it wants to be part of the agreement or not.

The real issue that India needs to deal with is that of its competitiveness; zero-duty access will wipe out large parts of Indian industry if these issues are not fixed, but this has little to do with FTAs, or economic partnerships. India and the US don't have an FTA, but that hasn't stopped President Trump from demanding that India lower its import duties. So, if, as part of the RCEP, India is able to negotiate a five-year period, say, in which it has to lower its import duties to zero—and it could be a longer period for some goods—the real issue is whether it will be able to fix the competitiveness issues by then. This requires India to, for instance, ensure that its corporate tax levels are on a par with those in other countries, and not the levels they are right now. It requires India's infrastructure deficits to be cured, Indian labour laws to be as flexible as they are in the rest of the world, it requires government permissions to be given as quickly as possible, etc. At a more fundamental level, India's reluctance to engage with RCEP is really about it not being certain how long it will take to deal with the issues of competitiveness. It is also worth keeping in mind that if India chooses to walk out of RCEP, its overall exports growth will get hit since global trade is increasingly between FTA areas; and, while high import tariffs will make local industry uncompetitive, these will also encourage smuggling to bypass tariff barriers.

Road to disaster

States diluting Motor Vehicles Act provisions a bad idea

WHETHER THE LARGE penalties in the Motor Vehicles (Amendment) Act 2019 prove to be the deterrent they are intended to be or not will only be clear in the coming months. But, ever since the new penalty regime came into effect, the large fines—thanks to those fined being caught with multiple violations—have dominated the public discourse. With instances of auto-drivers, truckers and those driving two-wheelers being slapped with fines running into tens of thousands of rupees, there is a sense that the new regime is unduly harsh, especially since even the fines for seemingly less significant offences have been revised upwards to large multiples of those in the previous regime. A trucker was fined ₹86,500 by the Odisha police, while another from Rajasthan was fined ₹1.41 lakh by the Delhi Police. A scooterist in Gurugram was slapped with fines totalling ₹23,000. All these instances may make the penalties seem excessive, but the fact is that, in the Odisha case, the fines were charged for allowing an unauthorised person to drive, driving without a licence, overloading, violating the dimension specifications, and a general offence, and in the Gurugram case, the scooterist couldn't produce the documents motorists are expected to carry, and was, allegedly, not wearing a helmet. The Haryana police has also said some of the fines will be "forgiven" if the required documents are produced in court. Against such a backdrop, states moving to take the bite out of the new regime—motor vehicles being in the concurrent list—by reducing some of the fines to a fraction of that prescribed under the new law, is a patent misstep.

Gujarat has notified fines that are 25-90% smaller than those prescribed under the central law. Tamil Nadu, and Karnataka have said that they will likely follow suit. Madhya Pradesh, and Telangana are forming committees to relook the fines while Odisha will give drivers a three-month breather before the new regime kicks in. There are a raft of offences for which the large penalty amounts can't be changed—drunk driving, juvenile driving, jumping red light, etc. But, for a host of others, from failure to wear seat-belt/helmet to not conforming with pollution norms, the states are free to decide how heavy the regulatory hand will be. Over 1.5 lakh people die in road accidents in the country every year, and over 5 lakh people are injured. The majority of the accidents (78.4%), PRS analysis shows, results from drivers' faults. India is a signatory to the Brasilia declaration, under which it must reduce accidents and traffic fatalities by 50% by 2022. But, if the teeth are knocked out of the new MV law, realising the goal would be hard. More so, given the Centre is also reported to be considering reducing fines for less significant offences.

NoLYNCHING

Dropping of murder charges in the Tabrez Alam lynching case shows what course justice delivery will take

WITH THE JHARKHAND Police dropping murder charges against 11 accused in the Tabrez Alam lynching case, the course of justice delivery in this case is now showing chilling parallels with what happened in the Pehlu Khan case. Those accused of Khan's lynching were acquitted by the trial court, due to Rajasthan Police's reliance on the private hospital where Khan was treated after being assaulted by cow vigilantes instead of the community health centre where his autopsy was conducted. While the latter stated shock linked to severe injury as the cause of death, the attending doctor claimed heart attack to be the cause of Khan's death two days after the assault. Alam, suspected of stealing a bike, was tied to a pole and beaten up by a mob that allegedly forced him to say "*Jai Shri Ram*" and "*Jai Hanuman*". He died four days after the assault. The Jharkhand Police is now charging the accused with culpable homicide not amounting to murder, a significantly reduced charge from the original murder charge, based on the post-mortem report saying that Alam died of cardiac arrest.

In both Khan's and Alam's cases, the police acted against the lynchers only after the video of the lynchings went viral and there was massive public outcry. In both cases, the links between the assault and the purported cause of the death—even if the latter were to be accepted—seem not to have been explored. In both cases, the police moved to book the victims first, despite reports of gaping holes in the versions of those accusing them of the crimes. Unless the investigation side gets its act together, there is no hope of an Alam or a Khan getting justice.

WELFARE SCHEMES

A CSS RESTRUCTURING/RATIONALISATION DEBATE REQUIRES RELOOK AT THE SEVENTH SCHEDULE, AND CANNOT BE DONE WITHOUT CONSULTATION WITH STATES AT AN APPROPRIATE FORUM

A central issue

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Views are personal

THERE ARE AT least three reasons for a discourse on central sector (CS) and centrally sponsored schemes (CSS). The difference between a CS and a CSS is that for a central sector scheme, all expenditure is borne by the Union government. For a CSS, part of the expenditure is borne by the Union government. States bear the rest, state contribution being contingent on type of state—North Eastern and Himalayan state versus others. First, the present CSS basket has an expiry date of March 31, 2020, co-terminus with recommendations of 14th Finance Commission. Therefore, from April 1, 2020, we will have a new CSS basket. Indeed, we need to plan for that CSS basket in advance, since the 2020-21 Union budget and state budgets will need to factor it in. Procedurally, a CS is somewhat different from a CSS. One can argue that revamping a CS is the Union government's prerogative while revamping a CSS, without consultation with states, is not. Second, the terms of reference (TOR) for 15th Finance Commission mention re-examination of CSSs, in a way. Perhaps, one should quote that: "Achievements in implementation of flagship schemes of Government of India, disaster resilient infrastructure, sustainable development goals, and quality of expenditure." For these, and some other areas, "The Commission may consider proposing measurable performance-based incentives for States, at the appropriate level of government." Third, the Union government is taking a look at CSSs. Hence, all three triggers converge.

Note two earlier committees, former Planning Commission's 2001 BK Chaturvedi Report on restructuring of CSSs, and Niti Aayog's 2015 Sub-Group of Chief Ministers' Report on rationalisation of CSSs. One shouldn't read too much into etymology, but "restructuring", and "rationalisation" are distinct expressions. If mere rearrangement is done, that's restructuring of sorts. The Chaturvedi report suggested nine flagship schemes (MGNREGA, IAY, SSA, NRHM, SSA, and so on) should remain as CSSs while another six (JNNURM, RKVY, and so on) should become CSs. Fifteen is a large enough number for public expenditure. Ideally, the Chaturvedi Report should have recommended scrapping all others. But, that would have been too drastic, and it didn't. So, when implemented, all schemes were repackaged, and retained. It was restructuring in the sense of rearrangement. The word "rationalisation" suggests more than restructuring does. It implies a rationale for continuation of existing schemes, scrapping of some, and even introduction of fresh ones. The Sub-Group of Chief Ministers talked about implementation, and divided schemes into core and optional ones. However, the core of the recommendation was the following: "The Sub-Group recommends that the existing CSS should be restructured and their number should be reduced to a maximum of 30 Schemes. All these schemes would be 'Umbrella Schemes', with every Scheme having a large number of components with a uniform funding pattern."

Thereafter, there are, ostensibly, 28 CSSs, divided into "core of the core" and "core". But, these 28 are umbrellas, and large umbrellas, at that. For purposes of illustration, let me take one scheme, known as "Green Revolution", and implemented by the Department of Agriculture, Cooperation and Farmers' Welfare. A scrutiny of the Union budget papers will tell you this umbrella covers "Rashtriya Krishi Vikas Yojana, National Food Security Mission, Agriculture Marketing, Information, Integrated Scheme on Agricultural Cooperation, Integrated Scheme on Agriculture Census and Statistics, National Agri-Tech Infrastructure, National Mission on Horticulture, National Mission on Oil Seed and Oil Palm, National Project on Agro-Forestry, National Project on Organic Farming, National Project on Soil Health and Fertility, Organic Value Chain Development for North East Region, Paramparagat Krishi Vikas Yojana, Rain-fed Area Development and Climate Change and Sub-Missions on Agriculture Extension, Agriculture Mechanisation, Plant Protection and Plant Quarantine & Seed and Planting Material." Clearly, a figure of 28 is misleading. Counted properly, the number of CSSs depends partly on how one defines a CSS. But, the number will be close to 200. Clearly, this is unsatisfactory.

> If Union government should contribute to health because it is nationally important, why should states not contribute to defence?

The issue isn't new. From the 3rd National Development Council (NDC) meeting in November 1954, "He (Shri Hanumanthaiah) also referred to the difficulties of the States in finding resources to meet their share of expenditure on the schemes sponsored by the Central Government and suggested consultation with the States before directives in this regard were issued." The 8th, in December 1956: "Similarly a large number of schemes were sponsored by other Ministries also, e.g., training schemes of the Ministry of Health and certain schemes for industry of the Home Ministry. The State (Madhya Pradesh) did not have money outside the Plan which could be provided to match the funds made available as Central assistance." In 1967, a sub-committee of NDC was set up to examine CSSs. Some points are evident. First, given paucity of resources, there can only be a limited number of CSs and CSSs combined, such as that Chaturvedi figure of fifteen. Second, there is an optimal level of governance at which public goods are best provided—Union, State, local body. The Seventh Schedule was a product of historical evolution and circumstances, and contemplated a certain structure of this optimal level of governance. It isn't cast in stone. If it is cast in stone, why should there be CSSs for items in the State List (such as health)? If Union government should contribute to health because it is nationally important, why should states not contribute to defence? Third, a CSS restructuring/rationalisation debate requires relook at the Seventh Schedule. Fourth, this can't be done without consultation with states at an appropriate forum.

Who lost Argentina, again?

The country has fallen back into an avoidable crisis because its economic and financial foundations have not changed significantly since 2001

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Views are personal

INVESTORS AND ECONOMIC observers have begun to ask the same question that I posed in an article published 18 years ago: "Who lost Argentina?" In late 2001, the country was in the grips of an intensifying blame game, and would soon default on its debt obligations, fall into a deep recession, and suffer a lasting blow to its international credibility. This time around, many of the same contenders for the roles of victim and accuser are back, but others have joined them. Intentionally or not, all are reprising an avoidable tragedy.

After a poor primary-election outcome, Argentinian President Mauricio Macri finds himself running for another term under economic and financial conditions that he promised would never return. The country has imposed capital controls, and announced a reprofiling of its debt payments. Its sovereign debt has been downgraded deeper into junk territory by Moody's, and to selective default by Standard & Poor's. A deep recession is underway, inflation is very high, and an increase in poverty is sure to follow.

It has not even been four years since Macri took office, and began pursuing a reform agenda that was widely praised by the international community. But, since then, the country has run into trouble, and become the recipient of record-breaking support from the International Monetary Fund.

Argentina has fallen back into crisis for the simple reason that not enough has changed since the last debacle. As such, the country's economic and financial foundations have remained vulnerable to both internal and external shocks.

Although they have been committed to an ambitious reform program, Argentina's economic and financial authorities have also made several avoidable mistakes. Fiscal discipline and structural reforms have been unevenly applied, and the central bank has squandered its credibility at key moments.

More to the point, Argentinian authorities succumbed to the same temptation that tripped up their predecessors. In an effort to compensate for slower-than-expected improvements in domestic capacity, they permitted excessive foreign-currency debt, aggravating what economists call the "original sin": a significant currency mismatch between assets and liabilities, as well as between revenues and debt servicing.

Worse, this debt was underwritten not just by experienced emerging-market investors but also by "tourist investors", seeking returns above what was available in their home markets. The latter tend to lack sufficient knowledge of the asset class into which they are venturing, and, thus, are notorious for contributing to price overshoots—both, on the way up, and the way down.

Undeterred by Argentina's history of chronic volatility and episodic illiquidity—including eight prior defaults—creditors gobbled up as much debt as the country and its companies would issue, including an oversubscribed 100-year bond that raised $2.75 billion at an interest rate of just 7.9%. In doing so, they drove the yields of Argentine debt well below what economic, financial, and liquidity conditions warranted, which encouraged Argentine entities to issue even more bonds, despite the weakening fundamentals.

The search for higher yields has been encouraged by unusually loose monetary policies—ultra-low (and, in the case of the European Central Bank, negative) policy rates, and quantitative easing—in advanced economies. Systemically important central banks (the Bank of Japan, the US Federal Reserve, and the ECB), thus, have become the latest players in the old Argentine blame game.

Moreover, influenced by years of strong central-bank support for asset markets, investors have been conditioned to expect ample and predictable liquidity—a consistent "common global factor"—to compensate for all sorts of individual credit weaknesses. And, this phenomenon has been accentuated by the proliferation of passive investing, with the majority of indices heavily favouring outstanding market values (hence, the more debt an emerging market issues, like Argentina, the higher its weight in many indices becomes).

Then, there is the IMF, which readily stepped in, once again, to assist Argentina when domestic-policy slippages made investors nervous in 2018. So far, Argentina has received $44 billion under the IMF's largest-ever funding arrangement. Yet, since day one, the IMF's program has been criticised for its assumptions about Argentina's growth prospects, and its path to longer-term financial viability. As it happens, the same issues plagued the IMF's previous efforts to help Argentina, including in the particularly messy lead-up to the 2001 default.

As in Agatha Christie's *Murder on the Orient Express*, almost everyone involved has had a hand in Argentina's ongoing economic and financial debacle, and all are victims themselves, having suffered reputational harm, and, in some cases, financial losses. Yet, those costs pale in comparison to what the Argentine people will face if their government does not move quickly—in cooperation with private creditors and IMF—to reverse the economic and financial deterioration.

Whoever prevails at next month's presidential election, Argentina's government must reject the notion that its only choice is between accepting and refusing all demands from the IMF, and external creditors. Like Brazil under then-President Luis Inácio Lula da Silva in 2002, Argentina needs to embark on a third path, by developing a homegrown adjustment and reform program that places greater emphasis on protecting the most vulnerable segments of society. With sufficient buy-in from domestic constituencies, such a program would provide an incentive-aligned path for Argentina to pursue its recovery in cooperation with creditors, and the IMF.

Given the downturn in the global economy, and the rising risk of global financial volatility, there is no time to waste. Everyone with a stake in Argentina has a role to play in preventing a repeat of the depression and disorderly default of the early 2000s. Managing a domestic-led recovery will not be easy, but it is achievable—and far better than the alternatives.

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LETTERS TO THE EDITOR

Future subserves the present

Apropos of "Thermal power industry is brazening out meeting new emission norms", why blame our pollution control agencies when Donald Trump walks away from climate accords, even as he goes big with domestic coal mining. An ambitious global scheme of carbon-credit was put in place, but the reins of the agenda came to be controlled by the business sector. Environmental policy was gradually moulded, less to address the challenge of behavioural change, and more to seek new investment and financial opportunities, packaged in climate concerns. Now, favouring big industrial polluters, it fails to encourage investment in clean technologies through adequate incentives. The windfall profits that stood to flow to fossil-fuelled industries in the the carbon-market had raised serious questions at its very inception. A brazen form of carbon capitalism has since emerged. An increase of 2.8% in CO2 emissions in the Eurozone in 2010, from energy production-related fossil fuel combustion, is proof that the future would now subserve the present, and not the sagely intended reverse.
— R Narayanan, Mumbai

An eco-friendly move

PM Modi, earlier this week, addressed the UNCCD summit in New Delhi. The summit emphasised global cooperation for a better climate and environment in the future. The summit aims at countering desertification at a global level. Being the host country, India made both, internal, and external promises at the summit. The PM also spoke about upgrading India's plan of converting 26 million hectares of barren land into fertile land by 2030. Mentioning the plans for other countries, he promised promoting 'South to South' cooperation in the field of environment protection. All of these steps are surely appreciable.
— Kavya Shah, Ujjain

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Tying up the knotty ENDS

Electronic nicotine delivery systems (ENDS) are stuck in a regulatory mire, with no clarity on whether they are to be treated as "drugs"

WHILE THE SALE of Electronic Nicotine Delivery System (ENDS)—e-cigarettes, vapes, etc—continues to be on the rise, the debate with respect to its regulatory framework remains inconclusive. At the core of the debate is the question whether ENDS falls within the definition of 'drug' under the Drugs and Cosmetics Act, 1940 (the Drugs Act).

The Delhi High Court, by an order of a single judge passed on March 18, 2019 (Delhi Stay Order), after considering provisions of the Drugs Act observed, prima facie, that ENDS is not a drug under the Drugs Act as it is not sold as a therapeutic device, or as having any medicinal usage for internal or external use of human beings or animals, intended to be used for in the diagnosis or treatment of any disease. The Delhi Stay Order also stayed the effect and operation of the Circular dated November 27, 2018 ("Circular") issued by the Central Board of Indirect Taxes and Customs (Anti-Smuggling Unit) and of the Advisory dated February 22, 2019, (Advisory) issued by the Union government. The appeal against the Delhi Stay Order was not entertained by the division bench of the Delhi High Court..

The Circular and the Advisory were issued to all custom authorities and state governments,, to ensure that ENDS is not sold (including online sale), manufactured, traded, imported and advertised in their jurisdiction except for the purpose and in the manner and to the extent as approved under the Drugs Act. The Circular and the Advisory were issued on the premise that ENDS is a drug under the Drugs Act.

The Drugs Consultative Committee, a statutory body established under the Drugs Act, in its meeting on June 1, 2019 also concluded that ENDS falls under the definition of "drug" under the Drugs Act. The committee, during its discussion, referred to the fact that nicotine gums (and lozenges) that are used for smoking cessation, are also covered under the Drugs Act and therefore, ENDS should not be treated differently.

Interestingly, this conclusion of the committee is diametrically opposite to its earlier observation in its 48th Meeting, held on July 24, 2015, when it observed that e-cigarettes are not covered under the definition of the term 'drug', and, therefore, the Committee concluded that ENDS cannot be regulated under the provisions of the Drugs Act.

Given the lack of clarity over the regulatory regime governing ENDS, the Delhi High Court, in another pending petition, directed the Union government to file an affidavit, listing the measures that would be brought into effect for regulation of ENDS.

More recently, the Bombay High Court, by an interim order, stayed any further investigation/action by Food and Drugs Administration, Mumbai, in the context of ENDS, in a petition filed by Godfrey Philips India. The Bombay High Court placed reliance on the Delhi Stay Order. The Mumbai petition, like the Delhi one, is pending final adjudication.

> **The legal question involves various multi-layered issues ranging from the exact nature of ENDS to limitations to freedom of commerce**

The lack of clarity on whether ENDS is a drug or not also leads to the debate whether the Union government can regulate ENDS or it will remain the exclusive domain of the state government(s). This stems from the fact that though public health falls in the State List, drugs and poisons fall under the Concurrent List. Therefore, if ENDS falls within the definition of drug under the Drugs Act, the Centre also will have the constitutional mandate to regulate it. However, an interpretation to the contrary will vest the jurisdiction exclusively with state government to pass regulations with respect to ENDS. The Delhi High Court, noting this, recorded in the Delhi Stay Order, "If the product in question is not a drug, respondent no.1 would not have the jurisdiction to issue the impugned circular. In this view, the impugned communication and the impugned circular are stayed, till the next date of hearing."

Amidst the legal debate on the exact nature of ENDS and its regulation, the ministry of electronics and information technology (MEITY) issued the Draft Information Technology (Intermediary Guidelines) Rules, 2018 ('Draft ITIG Rules, 2018'). Rule 3(2)(j) of the Draft ITIG Rules, 2018, prohibit the users from displaying, uploading, publishing, transmitting, updating or sharing any information that threatens public health or safety; promotion of cigarettes or any other tobacco products or consumption of intoxicant including alcohol and ENDS. Pertinently, the Draft ITIG Rules, 2018 are yet to be notified.

Further, as of now, 13 states, including Punjab, (vide circular dated October 3, 2018), Maharashtra (vide circular dated March 16, 2019), Karnataka (vide circular dated June 15, 2016), Kerala (vide circular dated August 1, 2016), Bihar (vide circular dated November 28, 2017), Uttar Pradesh (vide circular dated November 14, 2017), Jammu & Kashmir (vide circular dated July 24, 2017), Himachal Pradesh, Tamil Nadu (vide circular dated September 3, 2018), Puducherry, Jharkhand and Mizoram (vide circular dated June 8, 2016), have imposed a ban on the sale (including online sale), manufacturing, trading, importing and advertising of ENDS.

Pertinently, Haryana has also notified 'Nicotine in its pure chemical form' as 'poison', vide notification No. S.O.152/C.A.12/1919/S.2 and 8/2015 dated October 15, 2015 under the Poisons Act, 1919.

Interestingly, most of the state ban circulars, do not prohibit the use of ENDS by an individual and only prohibit the sale (including online sale), manufacturing, trading, importing and advertising. Therefore, it remains unclear whether ENDS, bought in a state where it is not prohibited, can be used in a state that prohibits it. Some of these state bans have been challenged before the respective High Courts.

The legal question involves various multi-layered issues ranging from exact nature of ENDS, extent of right of choice of the consumer to limitations to freedom of trade and commerce, amongst others, and it remains to be seen how the courts deal with them.

CONSUMER PROTECTION LAW

Caveat emptor to *caveat venditor*?

PANKAJ AGARWAL & SAGARIKA CHANDEL

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The new consumer protection law truly enforces the rights of the consumer

THE CONSUMER PROTECTION Act, 2019 (Act), published in the official gazette on August 9, 2019, seeks to replace the Consumer Protection Act, 1986. Such legislative reform became essential due to changes in the marketplace, variety of options available to consumers, global supply chain and indispensability of e-commerce.

The Act defines a 'Consumer' as a person who buys any goods or hires/avails any service for consideration. This excludes a person who obtains a good for resale or for commercial purpose. The definition includes e-commerce transactions, thereby bringing a much-required revamp in law.

The Act introduces the Central Consumer Protection Authority (CCPA)—it will regulate matters relating to violation of consumer rights, unfair trade practices and false/misleading advertisements. It shall have an Investigative Wing headed by a Director-General that may conduct inquiry/investigation as directed by CCPA. The CCPA has been empowered to, *inter alia,* take *suo motu* actions, pass orders, impose penalty, issue guidelines in public interest.

The Consumer Dispute Redressal Commissions (CDRCs) shall exist at the district, state and national level. The Act has now increased the pecuniary limits of the commissions due to which the district commission can now entertain complaints where the value paid doesn't exceed ₹1 crore. For state commissions, the jurisdiction range is ₹1-10 crore and beyond ₹10 crore for the national commissions. The active functioning of the district commissions will increase accessibility and bring about maximum reduction in the backlog.

Another crucial change is that the Act allows filing of complaint from anywhere (including e-filing) and hearing/examination of parties through video-conferencing in district commissions. It introduces attachment of consumer-mediation cell to each CDRCs. Each cell shall maintain a list of qualified, empanelled mediators. This will aim at further reducing backlog of cases in consumer courts. A product manufacturer, product-/service-provider and a product seller are liable to compensate for any defect in the product or deficiency in services.

> **The Act doesn't spare the consumer of the need for caution, but it does require diligence on the part of the manufacturer/ seller**

The definition of 'product seller' now includes any person who, inter alia, imports, sells, installs, repairs a products and places products for commercial purposes. As such, it appears that e-commerce platforms will fall under the wide gamut of 'product seller'. Further, the product manufacturer is liable even if he proves he was not negligent or fraudulent in making the express warranty of a product.

Any advertisement which falsely describes the product or deliberately conceals important information or conveys an express/implied representation constitutes an unfair trade practice.

The penalty for misleading advertisement is set at imprisonment (extendable to 2 years) and fine (extendable to ₹10 lakh). The Act also extends liability for misleading ads to the endorser. Celebrity endorsement is generally viewed as a viable option for brands to promote their products and build credibility. However, given celebrities enjoy larger-than-life cult status, such endorsers cannot merely play the role of information disseminators, and will now be required to exercise due diligence and verify claims made in the advertisement.

The Act deems a contract that hampers the right of a consumer due to its unfair conditions such as, disproportionate penalty, assignment of contract to detriment of consumer, excessive security deposit, unfair unilateral termination of contract, as an unfair contract. This will ensure that a dominant party is unable to coerce its way into unfairly profiting.

The Act truly reinforces the rights of the consumer. While new forms of business practices have given a plethora of options to consumer, they have also exposed consumer to vulnerabilities of unfair practices. With the Act, the era of 'caveat emptor' is giving way to that of 'caveat venditor'. Although the Act expects a reasonable degree of caution to be observed by consumer, yet a high standard of care and diligence in trade is required from the product manufacturer/seller/service-provider.

Anchoring IPOs to valuation certainty

Anchor investors help underwriters market hard-to-place offerings

RAMA SETH

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INITIAL PUBLIC OFFERING (IPO) activity, allocation to investors and pricing have been the subject of much debate over the last two decades. A major difficulty in IPO research is the lack of direct evidence on IPO allocations made to institutional investors because book building details are not open to the public. We bridge this gap by using a legal experiment in India. On July 9, 2009, Sebi allowed a two-stage IPO process in which qualified institutional investors were allowed to act as anchor investors (or lead investors) in IPOs. Under the law, anchor investors are allotted shares on a discretionary basis and the price at which the allocation is made is disclosed by the lead investment bank one day before the opening of the offer to the public. If the price fixed for public issue through the book-building process is higher than the price at which the allocation is made to anchor investors, the additional amount is to be paid by anchor investors. However, if the price fixed for public issue is lower than the price at which the allocation is made to anchor investors, the difference is not payable to anchor investors. These investors face a short lock-up period of 30 days from the date of allotment. Thus, the Indian IPO process is a sequential hybrid mechanism in which anchor investors lead the price-setting process.

Here, we answer several important questions: How does the involvement of anchor investors affect underpricing? How do anchor investors decide in which issues to request allocations? Are anchor investors given disproportionate allocations in substantially underpriced IPOs? Do they have a destabilising impact on stock prices around the lock-up expiration date? Do anchor-backed IPOs have higher risk-adjusted returns in the long run?

Regulators have been concerned about the potential conflict of interest between investment banks and investors for many years. Investment banks have the discretion to allot shares in an IPO. Research on IPOs in the US has shown that investment banks allot shares in hot IPOs (i.e., highly underpriced IPOs) to institutional investors in return for assured investment in future IPOs. Our setting allows us to examine whether this is the case. By studying the Indian experiment, a larger issue we address is whether regulators should consider moving to a two-stage IPO mechanism and, if they do, how the process would affect issuers and investors.

If anchor investors have to truthfully reveal information about the intrinsic value of the IPO firm, then they must be offered more allocation or underpricing. We find that anchor backed IPOs are less underpriced. Underpricing falls by 6.4% when anchor investors are involved. This could be due to the certification effect anchor investors have on IPOs. It could also be that anchor investors solve valuation uncertainty for IPOs. IPOs backed by anchor have a narrower price band and these investors bid low, i.e., towards the lower end of the price band. Since later investors learn from valuations submitted by anchor investors, their bids tends to be in line with the latter's bid. Consequently, these IPOs are less underpriced.

Who requests anchor investors to submit their bids? Naturally, smaller firms and smaller IPOs that suffer from asymmetric information (i.e., managers of the firm know more about the firm than outside investors) or firms facing difficulty in going public (measured by the time elapsed between the prospectus filing date and the offer date) would find an association with anchor investors beneficial. Indeed, this is what we find. Anchor investors are more likely to invest in these firms.

Research in the US shows that institutional investors are allotted disproportionately large number of shares in hot IPOs. In the Indian context, this is not an issue. Anchor investors receive allocations in both under- and over- priced IPOs. In other words, the nature of book building in India prevents investment banks from expropriating wealth from retail investors.

As anchor investors invest in hard-to-place offerings, it must be that they are compensated for their efforts. The lock-up provision restricts them from selling shares on the listing day. Profits are determined by the allocation decision of underwriters and they may reward anchor investors by allocating shares in underpriced issues. Because anchor investors face a 30-day lock-up, first-day returns (traditional definition of underpricing) are less relevant to them. We calculate the hypothetical returns to anchor investors if they were to sell upon lock-up expiration. Returns are calculated as the percentage difference between the price at which anchor investors are allotted shares and the price that prevails on the lock-up expiration day. IPOs backed by reputed anchor investors, on average, produce 137% returns up to the lock-up expiration date.

However, after adjusting for risk, IPOs backed by anchor investors do not earn abnormal returns in the long run. While all anchor-backed IPOs do not earn abnormal returns after adjusting for risk, it is likely that anchor-backed IPOs earn superior returns through monitoring when anchor investors invest along with certain types of investors. If monitoring causes superior performance, we expect the performance advantage to be the highest for firms backed by anchor investors, UTI, other mutual funds, and VCs and the lowest for firms with little or no investment from anchor investors, UTI, and VCs. Because of economies of scale in monitoring, institutional investors such as anchor investors may resort to active monitoring only when the level of institutional shareholding is above a threshold. The results confirm our prediction that IPOs backed by anchor and other institutional investors perform better than IPOs with little institutional investor involvement. These firms generate a positive alpha of 1.25% per month (or 15% per annum).

Our article shows that the two-stage IPO process has several features that issuers, investors, and regulators consider desirable. Anchor investors help underwriters market hard-to-place offerings. The presence of reputed anchors can potentially reduce valuation uncertainty and underpricing.