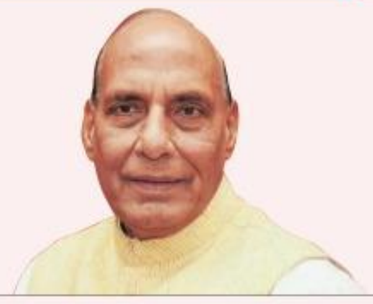
Opinion

THURSDAY, SEPTEMBER 5, 2019



CHEERY BLOSSOM
Union Defense Minister, Rajnath Singh

"My visit to Japan has been remarkable and successful in many ways. This visit has reiterated our Prime Ministers' unwavering commitment to working together towards a vision for Indo-Pacific region"

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Bank-merger good, now to fix them

Shedding flab critical, as is adopting technology; so this needs a change in work culture, PSBs not known for that

WHILE A LOT of us would like to see the weaker public sector banks—and there are many of them—being wound down, we know this is politically infeasible and, therefore, it is unreasonable of us to expect any government to do this. Let's face it, laying off tens of thousands of employees is simply not an option. Indeed, it is creditable the NDA has decided to go ahead with consolidation in the space because bringing down the number of PSU banks is a great idea. In fact, the remaining ones too should be amalgamated soon. Clearly, merging two weak banks with a somewhat-less-weak one doesn't help. Also, the merger process—off ten banks into four—is not going to result in any cost synergies because there is going to be no retrenchment. But the natural attrition should, over time, bring down the workforce and expenses.

While it is important to shed flab, the tougher task is to change the work culture. That is easier said than done, because years of incompetence, inefficiency and even insincerity cannot be undone overnight. While a private sector CEO will help, to be able to bring about a meaningful change to the work ethics, it is also important to have a top team that comprises some fresh blood. Without a complete overhaul of the mindset and the systems, it will become increasingly harder for public sector banks to compete at a time when banking is seeing a paradigm shift, and banks are morphing into fintechs.

Even before the technology platform assumed importance, they had been ceding share to their private sector competitors, both in the loans and deposits markets. That, together with their NPA woes, has left their revenues subdued; since the managements have no leeway to rein in employee expenses or other costs, the profits have suffered. The biggest roadblock has been the unions who clamour for annual raises of 10-15%, with no commensurate improvements in productivity.

The unfortunate fact is that the employee unions enjoy immense clout, and unless banks have the right to hire and fire—like their private sector peers do—their business models can't be viable. Expenses on technology are going to mount and banks need to hire talent in areas such as blockchain, AI, IoT and cyber-security. The government may continue to inject capital, but, this must be used to lend to the right set of customers. Customers—especially the younger lot—can be very demanding, and servicing them requires not just top-class technology and a range of products but also top-quality service levels. Already, NBFCs have acquired a meaningful market presence in several segments—the HDFCs and Bajaj Finances of the world have done extremely well for themselves. Despite their large branch networks, and strong deposit and customer base, PSU banks have lost out.

Merging 10 PSBs into four may be the best decision possible, but the timing is not great; managements will be kept busy by operational issues at a time when the focus should be on lending to get the economy back on its feet

While they were heavily weighed down by the asset quality problem which cost them both capital and management time—nearly a dozen banks were put under the PCA framework where they were barred from growing risk-weighted assets beyond a point—they failed to make headway even in traditionally strong areas. So, while the deposits were coming in, thanks to their strong franchises, these were not really being put to work. Although the system's retail portfolios were growing rapidly, PSUs couldn't cash in on the trend partly because their procedures can be cumbersome and also because they did not have the products to showcase. Most of them were left doing little other than the mandatory priority sector lending, and today, are slowly becoming irrelevant in the loan market. The restructuring might bring in size and scale benefits but it is very unlikely to result in any meaningful improvement in profitability. Had they been merged with their stronger peers decades ago, their balance sheets would not have been in the sorry state that they are. But all that is now, water under the bridge. The government has talked of making life easier for state-run banks by giving their board and senior managements, additional powers. But, bankers are apprehensive of taking decisions and may not be convinced by the government's efforts to protect them from the 4Cs—CAG, CBI, CVC and the courts. Also, while the NDA must be applauded for initiating the amalgamation of ten banks into four entities, the timing is not sweet; the operational hassles could leave managements preoccupied at a time when they need to be focussed on lending to help the economy get back on its feet. The banking system today has surplus liquidity, but loan growth is slowing—non-food credit growth slowed to sub-12% year-on-year in the latest RBI reading, the slowest in many, many months. So, the ₹55,000 crore that the government proposes to infuse into these lenders may not be put to work just yet. This is unfortunate because the ten banks account for 23% of the total credit in the system. Nonetheless, it is a good start and the government must not give in to pressure from the unions and the process mustn't stall. It will not be easy, but there is, really no room now for soft options.

PayCHARGES

Govt must foot the MDR charges if banks are not willing

WHILE DIGITAL PAYMENTS have posted a stellar growth over the past year, cash is still going strong. The ratio of currency in circulation—8.8% in March 2017—jumped to 11.4% in March 2019. To arrest this and spur digital, the finance minister, in her maiden budget speech, had announced that the merchant discount rate (MDR) would be done away with for businesses with a turnover of more than ₹50 crore, and that the Reserve Bank of India (RBI) and banks would bear the cost. But, now, according to a *Hindu Business Line* report, the idea has not found resonance with banks, who have deferred implementation saying they are awaiting clarity on government rules.

The merchant discount rate is the rate charged to the merchant by the card-issuing bank, payment service, and the PoS provider. Although the government had eliminated MDR charges on transactions below ₹2,000 and had introduced differentiated rates for QR codes, the new move is a step forward to shift the cost of transactions on banks, so that merchants can transact more via digital. But, payment companies believe that banks may choose not to deploy more infrastructure in light of increasing charges. A recent report released by RBI highlights that the central bank is looking to improve the card acceptance infrastructure to 50 lakh by the end of 2021. There were 39.91 lakh PoS terminals in the country as of June 2019, and ₹56,973 crore worth of debit card transactions took place via these terminals. A better idea, thus, would be for the government to bear the costs of digital payment. More important, what the banks need to realise is that the cost of transactions in digital—even if it falls to them—is lower than the cost of transacting in cash. Given that banks spend ₹21,000 crore every year in currency management operations and the estimated MDR in 2016-17 was just ₹3,000 crore, adopting digital by footing the MDR bill would make more sense. Else, the shift to digital that India has seen over the last few years, will slow down, even if it isn't summarily threatened.

THE BREXIT DEAL

NEITHER JOHNSON NOR ANYONE ELSE CAN PREDICT HOW THINGS WILL UNFOLD. THOUGH, WHEN THE DUST SETTLES, BRITAIN'S CONSTITUTIONAL LANDSCAPE WILL NOT BE QUITE THE SAME AGAIN

How Brexit blew up **Britain's constitution**

THERESE RAPHAEL
Bloomberg

AFTER WEEKS OF poking and jabbing, Boris Johnson finally looks close to getting the reaction from parliament he seems to have wanted all along. If lawmakers succeed in taking charge of the parliamentary time table Tuesday in order to pass legislation that would block the prime minister from pursuing a no-deal Brexit, he is expected to demand a snap election. A two-thirds majority of parliament would be required to approve a new vote.

It is a high-risk strategy befitting a politician who likes to roll the dice. Neither Johnson nor anyone else can predict how it will unfold. What can be said, though, is that when the dust settles, Britain's constitutional landscape will not be quite the same again.

Tussles between executive and legislature are common in US politics, where the branches are separate and their roles are enshrined in a written constitution. But in Britain, the majority party forms the executive and dictates the legislative schedule; the two branches are intertwined and the balance of power between them is largely governed by convention.

The existing order was flexible enough under a workable majority government. But it broke down after the 2017 election produced a hung parliament. MPs opposed to Theresa May's Brexit deal began breaking with convention, including to seize control of the timetable. Now they are trying to do so again, but this time, to thwart an executive that wants to circumvent parliament. The battle is now so totemic for both sides that winning takes precedence over preserving constitutional integrity. The question is how that will change the terms on which future political battles are waged.

Johnson's decision to suspend (or prorogue) parliament, argues constitutional scholar Paul Craig, is an abuse of the government's discretionary powers; it "diminishes parliamentary sovereignty as a foundational principle, and transforms the UK constitutional order such that the cards become stacked in the executive's favour."

Not everything that is undemocratic is unconstitutional, as my colleague Noah Feldman noted Monday. Most constitution-watchers expect legal challenges to Johnson's move to fail, but Craig's arguments suggest, it is perhaps more finely balanced and that the effects will be long-lasting at any rate. A ruling against Johnson would, of course, put the Queen in the awkward position of having approved an illegal prorogation.

Johnson's supporters see his actions as both necessary and proportionate; Remainers, they argue, started down this slippery slope under May's government. And, yet a fair distance has been travelled in constitutional terms. Leaving the European Union was officially about restoring parliamentary sovereignty by reclaiming legislative power that had been delegated to the European Union. Johnson has succeeded in making the central political debate about claiming popular sovereignty over a parliament that is dragging its feet over implementing the 2016 Brexit referendum.

His critics, even among conservatives, see a much more sinister shift afoot as Johnson repositions the Tory party (a shift I described recently here). "Fundamentalism to me is something new and radical and ideological that claims a kind of originalism and conservatism to it. And I think that's what's happening now," argues Carl Gardner, a former government lawyer who teaches constitutional law, speaking in a recent podcast debate with the Conservative journalist Toby Young.

There are myriad ways Johnson's plan could backfire. At present, his Conservative Party are leading in the polls. But Theresa May had a substantial lead when she called a snap election in 2017, which ended in disaster as her party lost its governing majority. (Of course, she was an abysmal campaigner, whereas a campaign would play to Johnson's strength.)

Still, the electoral math is dizzyingly complex now. There are four UK-wide parties, rather than two, which are polling well. The rebellion of a number of Tory moderates (some of whom might be deselected by Johnson for voting against the government) and the possibility that other parties might strike up electoral alliances to stop a no-deal Brexit all make an election particularly hard to predict.

The biggest wild card is Nigel Farage's Brexit Party, which says it will field candidates in every constituency, including in Conservative strongholds, but has also said, it would make tactical concessions to Johnson if he promises to stay on the path to a "clean" Brexit. It also seems that Labour will not play along with early elections without attaching conditions.

Johnson is a big-C Conservative, but these aren't the moves of one who seeks to preserve an existing order, or change it through accepted process, which would be the hallmarks of true conservatism

Johnson's chief argument to more moderate voters in an election would be that he's closing in on a compromise agreement with the EU that would be destroyed if Brussels believes parliament can stop no deal anyhow. That's highly dubious, as numerous reports from Brussels and EU-capitals suggest. The EU hasn't closed any doors, and there are no signs that the UK government has advanced new proposals that could replace the Irish backstop provision that Johnson wants scrapped.

His other electoral pitches may be more compelling. To conservative voters who are uncomfortable with a no-deal Brexit, Johnson will claim both parliament and the EU left him no choice. He will argue that anyone who thinks a no-deal Brexit poses economic risks hasn't met Jeremy Corbyn or read his socialist agenda. For Labour voters from leave-supporting constituencies, there is a raft of new spending promises on public services, making Corbyn's stale campaign against Tory austerity look very 2012.

It may be that an electoral majority, if he could secure one, would allow normal parliamentary service to resume as well as Brexit to be delivered. And yet once conventions are broken and power is exercised, it becomes impossible to unlearn those strategies or leave such tools untouched. Should Johnson lose his gamble, another leader will likely seize on the precedents he has set. If he wins, we might as well refer to him as President Johnson. It is unlikely that Britain's constitutional balance will be what it was.

Johnson is a big-C Conservative, but these aren't the moves of one who seeks to preserve an existing order, or change it through accepted process, which would be the hallmarks of true conservatism. He is, as Gardner has it, "aggressively asserting the power of central government over all other institutions—over parliament, over the courts, over the public itself."

Can a conservative be a revolutionary really? Former US Secretary of State Henry Kissinger wrote in his book Diplomacy that under the right conditions, the combination can be devastatingly effective, at least for a time:

What is a revolutionary? If the answer to that question were without ambiguity, few revolutionaries would ever succeed. For revolutionaries almost always start from a position of inferior strength. They prevail because the established order is unable to grasp its own vulnerability. This is especially true when the revolutionary challenge emerges not with a march on the Bastille, but in conservative garb. Few institutions have defenses against those who evoke the expectation that they will preserve them.

He was speaking of Otto von Bismarck—a figure much admired by Johnson's closest adviser, Dominic Cummings. But he might have been talking about Britain circa 2019.

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A silver lining

The Jalan panel was constituted quietly in the midst of the finance ministry-RBI maelstrom. It did its work, albeit with some public acrimony, but delivered what I believe are sound results

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Views are personal

THE JALAN COMMITTEE'S recommendations on transferring a part of RBI's "excess" capital to the government represent a possible silver lining in the thunderstorm that has been pummeling India's economic growth. This is not only because it may assist the government in meeting this year's fiscal deficit target, but more pertinently because it represents the first public quasi-acknowledgement by the Modi government that having experts, who have significant domain knowledge and experience, determine policy frameworks can be of huge value.

One of the loudest failures of the government, from its first election to today, has been the cavalier attitude it has shown to knowledge and experience. Senior bureaucrats were—and continue to be—transferred to completely unrelated ministries, nullifying their years, perhaps decades, of experience. As a result, we have had some incomprehensible decisions hurriedly implemented—read demonetisation—and even some extremely sound policies implemented in a haphazard and not-thought-through manner—read GST.

Even today, with the economy deep in the danger zone, policies are being put forth without adequate planning. For instance, as argued very clearly in an op-ed in the *Economic Times*, the current proposal to immediately merge several public sector banks into one another, while sound in principle, reflects the worst possible timing, since at this time, banks need to focus primarily on sharpening—and increasing—their lending (particularly given the generous government support), instead of which several bank managements will now need to spend huge amounts of time in managing the mergers.

What the government clearly doesn't realise is that the economy and markets are not swayed as easily as the electorate. Simply making triumphal pronouncements is not enough—the economy needs sound ideas, careful planning and meticulous implementation. The sum total impact of the government's economic policies over the past five years is there for all to see—a sharp and continuing decline of our GDP growth rate.

Between 2014 and today, of 14 large economies, only Turkey and the UK have seen GDP growth fall more sharply than India. To be sure, there has been a modest global slowdown, but half of the countries I looked at—Brazil, France, Indonesia, Japan, Poland, Russia and the US—are reporting higher GDP growth rates than in 2014, indicating that sensible, tailored policies can keep growth ticking over even in difficult times. The comparative story in Asia is even bleaker, with 7 of 11 Asian countries showing increased GDP growth; India's performance is by far the worst. Even Pakistan, often dismissed as a basket case, is growing faster than we are today. It is clearly disingenuous to claim global circumstances are the main reason for the government's failure on the economy.

It is significant that the two large countries that are faring worse than India are hobbled by negative sentiment—Turkey as a result of Erdogan's flailing around as his imperial reign appears to be ending, and the UK, of course, because of Brexit and, now, Boris Johnson. Negative sentiment in India, too, has been spreading rapidly and is, without doubt, a significant force in the slowdown.

It is often said that acknowledging a problem is a necessary step to solving it, but, thus far at least, this government appears unable to admit failure in the smallest of issues, let alone ones as dramatic and apparently as close to its heart as economic development—remember, *acche din*, the target of a $ 5 trillion economy by 2024, and so on.

Of course, there is no need for loud *mea culpa's*; the Jalan panel was constituted quietly in the midst of the finance ministry-RBI maelstrom. It did its work, albeit with some public acrimony, but delivered what I believe are sound results, both in terms of immediate impact as also, critically, in setting a framework for future operations.

It is another matter that the RBI board decided to push the limits of the recommendations, as one of the committee members pointed out; clearly, institutional capture, which is another structural reflection of the insecurity of the government, remains a strong agenda item.

Given that the global growth environment is also turning more difficult, the government needs to wake up and build on its lone expert-driven success. Otherwise, we may have to accept 5-5.5% as the upper bound of India's growth, which could lead—a la Erdogan and, even, Putin—to an electoral surprise in 2024.

This may turn out to be the real silver lining.

LETTERS TO THE EDITOR

Amazon, fire stuck

Number of fires in the Amazon basin are on the rise, despite the imposition of a ban and a close surveillance by the authorities. While a drought could prevent fires going forward, it threatens to affect the survival and re-generation of species. Also, it is prudent to sustain damp conditions in the soil, to prevent the combustion of underlying fuel-layer, limit the impact to only dead-wood and increase the overall resistance to fire. Robust forest-monitoring is required to assess the impact of fire-scars. Proactive fire-management, improved early warning systems and greater political-will is required to overcome the chronic challenge, before it starts affecting the health and climatic conditions across the globe. Public education on management of fire-sensitive orchards/agroforestry systems, to produce high-income plantations, can facilitate the use of alternative land-management tools. A relatively negative perception could hamper asset-quality and prompt big international funds to disinvest, especially when asset managers, pension funds and companies have already issued warnings. As political-goodwill continues to degrade, the sovereign faces a risk of increased scrutiny and potential socio-economic crisis, with rising international concern over deforestation. A below-par administration has created headwinds to export-demand and investment inflows as lacking accountability and weak norms on environment-conservation, are found fueling the extractive activities, for the purpose of business expansion and development of large-scale infrastructure projects.
— Girish Lalwani, Delhi

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R.N.I. Reg. No. 6188/61 Printed for the proprietors, The Indian Express (P) Ltd by Vaidehi Chintaman Thakar at The Indian Express (P) Ltd Press, Plot No. EL-208, TTC Industrial Area, Mahape, Navi Mumbai-400 710 and published from Express Towers, Nariman Point, Mumbai-400 021. Editorial & Administrative Offices: Express Towers, Nariman Point, Mumbai-400 021. Phone: 22022627/67440000. Fax: 022-22856323.
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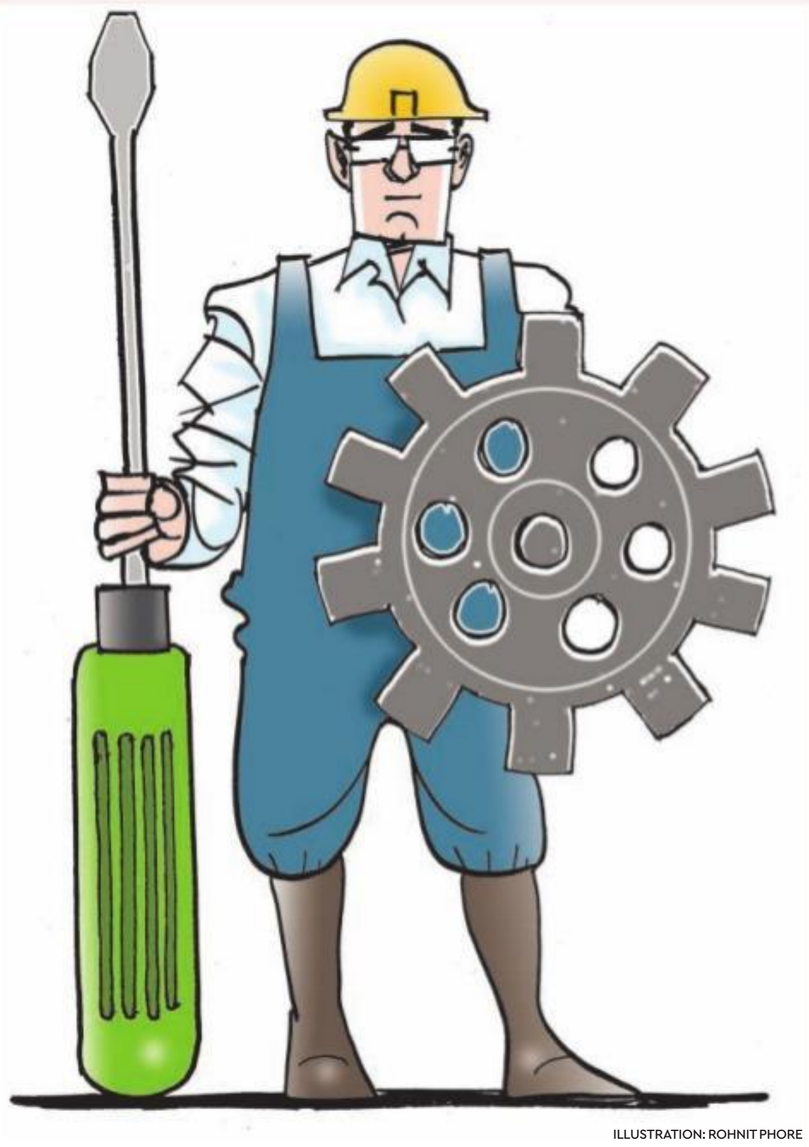

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Occupational Safety Code needs serious evaluation

Ironically, the Occupational Safety Code has not adequately dealt with issues concerning occupational safety and health, which is non-negotiable and even fit to be a fundamental human right, for this spills beyond the workplace and into larger spaces affecting people and the environment (case in point is the Bhopal gas tragedy)

THE OCCUPATIONAL SAFETY, Health and Working Conditions Code, 2019, seeks to combine 13 laws relating to factories, mines, dock workers, building and other construction workers, plantations labour, contract labour, interstate migrant workmen, working journalist and other newspaper employees, motor transport workers, sales promotion employees, *beedi* and cigar workers, cine workers and cinema theatre workers. It, clearly, is an uneasy amalgam of laws that cover a wide variety of workers belonging to the organised (factory, dock, mines) and the unorganised (contract, construction workers) sectors.

Even though the government claims that it covers establishments employing 10 or more workers, as we read through the code we do find varying thresholds—say, for contract labour issues (20 workers), safety committee or officer (500 workers in factories and construction sites)—and this implies that the code dispenses with the universal coverage model that was extended to the wage and social security codes.

The occupational safety code has not dealt with adequately, and even imaginatively, the issues concerning occupational safety and health. The Factories Act, 1948, lists the maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes in the Second Schedule, which could be expanded as per the advice of the experts, while the code inexplicably omits the Second Schedule and, in fact, leaves the enumeration of these to be decided by the state governments (Section 83).

Further, the Factories Act stipulates the compulsory constitution of a bipartite safety committee in every factory in which hazardous processes or substances are used. But the occupational safety code leaves the constitution of the safety committee to the notification process of the appropriate government (Section 22), and hence the Section 14 reads uncertain: The worker who apprehends serious health hazard shall represent it to the committee "if constituted by the employer." What was earlier a workers' right, now has been reduced to a "prospect" subject to the whims and fancies of the state governments.

On one hand, technological inventions and innovations pose considerable threats and challenges to the occupational safety and health issues in the organised sector, and potentially dangerous works are performed in the unorganised sector for securing subsistence wages such as rag picking. Hence, hazardous work needs a wider coverage to include those performed in the unorganised sector as well. It bears relevance to mention here the Chapter IV-A—that deals with several issues concerning occupational safety and health, and was inserted in the Factories Act in 1987 post the Bhopal gas tragedy—which has lent sinews to the regulations concerning it.

According to the Annual Survey of Industries, in 2016-17 less than 5% of the factories in operation employed more than 499 workers, while those employing 50 or more workers constituted 70.53% of total employment, which means the safety provisions have very limited coverage. Furthermore, the average size of a factory in the organised sector (i.e. workers employed per factory) has declined from 65.95 in 2010-11 to 2012-13, to 48.04 in 2014-15 to 2016-17, and given the widespread impact of technological progress in production processes, especially in chemical and other potentially hazardous industries, occupational safety and health becomes a universal concern, and hence gradually cover more and more establishments. This is one of the reasons India has not ratified 12 of the 17 occupational safety and health convention of the International Labour Organisation. In fact, occupational safety and health should be non-negotiable and is fit to be enshrined as a fundamental human right, for this spills beyond the workplace and into larger spaces affecting people and the environment (the case in point is the Bhopal gas tragedy).

The occupational safety code requires the employers to seek prior consent from the workers to perform overtime (as also for night shift in case of women employees), which is a welcome move. But the individual worker may not, in reality, enforce this right in case of violation of this by the employer due to well-known reasons like absence of or weak supportive institutions like trade unions and labour inspection. Nonetheless, these uninspiring empirical realities need not discourage the lawmakers to drop this important labour right.

For the first time in the legislative history, the occupational safety code requires every employer to issue an appointment letter, but does not stipulate a remedy in case of non-compliance of it, save the general monetary penalties provided for violation for any clause of it. In China, if the employer fails to conclude a written contract within one year of employment of a worker, then the latter will be deemed to have been appointed in an open-ended contract.

While the Factories Act precisely stipulates the hours of work, spread time and the overtime, the occupational safety code leaves these to the discretion of the appropriate government. This is a bad law-making process. When the states compete for fresh capital and retaining the existing ones, the employers can use of the threat of relocation or export needs (which legitimises any reform irrespective of their consequences to labour standards) to coerce the genuinely unwilling governments to stipulate unwelcome standards on these. Therefore, these will lead to a race to the bottom of labour standards.

Finally, Section 47(2), a new clause, allows labour supply contractors by allowing them to secure "renewable work-specific licence" to execute a specific work mentioned in it, even if they do not fulfil the requisite qualifications or criteria. This, at once, reaches the zenith of flexibility and plumbs to the depths of perversion. What must anger the working class is that despite the Supreme Court's endorsing ruling on and the universally-agreed labour market norm of "equal work, equal pay," the government is refusing to legislate the same, even though this exists in the Rules framed under the Contract Labour Act.

Codification is necessary to rationalise proximate labour laws, but this should not lead to bundling together of diverse and unique laws concerning disparately positioned categories of workers, which are yet to mature into meaningful pieces of legislation (for example, the law on building and construction workers) in their own right and hence need respective suitable amendments.

Global growth on a tightrope

ANIL K KANUNGO

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GLOBAL GROWTH IS currently shaky. According to the latest update by the WEO, IMF, in July the projection of global growth is under revision, moving to 3.2% in 2019 and 3.5% in 2020. The current revision reflects negative surprises for growth in emerging markets and developing economies; most emerging markets like BRICs have 30% of the world GDP and 17% share in the world trade.

Growth is projected to improve between the end of 2019 and 2020. Large increase in such growth closer to about 70% relies on an improvement in growth performance in stressed emerging markets and developing economies. With trade war between the US and China, Iran-US disturbances, high debt-to-GDP, large amounts of NPAs in India and the deadlock at WTO negotiations, emerging markets are not clear about the growth path or the direction of world economy.

Global growth is sluggish, but it may not have been this way, as some of the polices followed are self-inflicting or self-inflicted. Dynamism in the global economy is being weighed down due to prolonged policy uncertainty as trade tensions still rise without showing any signs of abating. The recent meeting of the G20 in Osaka, Japan, couldn't even foster US-China trade truce. To add, tensions with respect to Huawei are threatening global technology supply chains, and the prospects of a no-deal Brexit have risen.

The negative consequences of policy uncertainty are visible in the diverging trends between the manufacturing and services sectors. Manufacturing investment continues to decline as business sentiment is worsening in spite of having a low interest rate. Disbursement of loan credit has been minimal across the world. Businesses hold off on investment in the face of uncertainty. Global trade growth, which moves closely with investment, slowed to 0.5% (year-on-year) in the first quarter of 2019—its slowest pace since 2012. On the other hand, the services sector is holding up and consumer sentiment is strong, as unemployment rates touch record lows and wage incomes rise in several countries.

In addition to resolving trade and tech tensions, countries need to work together to address climate change, corruption, international taxation and cybersecurity

In emerging markets and developing economies, growth is being revised down by 0.3 percentage points in 2019 to 4.1%, and by 0.1 percentage points for 2020 to 4.7%. The downward revisions for 2019 are across the board for major economies. In China, the slight revision downwards reflects due to higher tariffs imposed by the US in May 2019, while significant revisions in India and Brazil reflect weaker-than-expected domestic demand, export slowdown and spillover effects of NPAs. Even for commodity exporters, supply disruptions, such as in Russia and Chile, and sanctions on Iran, have led to downward revisions despite a near-term strengthening in oil prices.

Financial conditions in the US and the EU have eased, as the US Fed and the ECB adopted an accommodative monetary policy stance. Emerging markets have benefited from monetary easing in major economies, but have faced volatile risk sentiment tied to trade tensions. Low-income developing countries, which received stable FDI, now receive volatile portfolio flows, as the search for yield in a low-interest rate environment reaches frontier markets. The current downside risk to the world economy emanates from escalation of trade and technology tensions. Earlier high tariff imposition and future scare of tariff hike by the US and China will further trigger reduction in global output by 0.5% in 2020.

To support global growth, world leaders must prescribe to constructive policies such as making monetary policy accommodative especially where inflation is softening below target. But it needs to be accompanied by sound trade policies that would lift the outlook and reduce downside risks. Fiscal policy should balance growth, equity and sustainability concerns, including protecting the society's most vulnerable. Countries with fiscal space should invest in physical and social infrastructure to raise potential growth. In the event of a severe downturn, a synchronised move towards more accommodative fiscal policies should complement monetary easing, subject to country-specific circumstances.

The need for greater global cooperation is urgent. In addition to resolving trade and technology tensions, countries must work together to address issues such as cybersecurity, corruption, climate change, international taxation, etc.

Making India an arbitration hub

Recent legal reforms and judgments point towards India gradually developing into an arbitration-friendly regime

GUNITA PAHWA

The author is joint managing partner, Singh & Associates

THE PASSING OF the Arbitration and Conciliation (Amendment) Bill, 2019, on August 1, 2019, and that of the New Delhi International Arbitration Centre Bill, 2019, on July 18, 2019, are the first few firm steps in the long walk ahead of us in terms of making India an international arbitration hub. Complemented by the NITI Aayog's 'National Initiative towards Strengthening Arbitration and Enforcement in India' and the central government's 'Make in India' initiative, these reforms will help the country reach newer heights not only in terms of arbitration, but also in various allied business fields.

It has been seen quite often that foreign companies entering into business contracts with Indian companies prefer a foreign arbitration centre for dispute resolution, primarily due to lack of institutionalised arbitration in India. This newly passed Bill puts India, with the help of the to-be-established Arbitration Council of India (ACI), at a parallel footing with big arbitration hubs such as the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC) and the ICC International Centre for ADR (ICC).

The ACI is to be headed by a chairperson who must have been a judge of the Supreme Court or Chief Justice of a High Court or a judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of arbitration, to be appointed by the central government in consultation with the Chief Justice of India. Other members will include an eminent arbitration practitioner, an academician with experience in arbitration and various ex officio government appointees. There shall also be a chief operating officer of the ACI and a secretariat to the ACI to manage administration. In addition, the ACI has a multitude of functions including framing of policies to grade arbitral institutions and accredit arbitrators, make and maintain uniform professional standards for ADR matters, maintain a depository of awards, etc.

The Supreme Court, for international commercial arbitrations, and the respective High Courts, for domestic arbitrations, may now designate arbitral institutions for appointment of arbitrators. An application for appointment of the arbitrator is to be disposed of within 30 days. Written submissions are to be filed within six months of the appointment of arbitrators. Further, Section 42A requires maintenance of confidentiality of arbitration proceedings. These new rules would invite more and more organisations to prefer an Indian arbitration centre as they make arbitrations easy, efficient, time-bound and hassle-free, bringing them in tune with global practices.

In the *Kandla Export vs Oci Export Corporation* case, the Supreme Court took a pro-arbitration stand and refused to intervene by holding that the appeals with respect of arbitration proceedings are exclusively governed by the Arbitration Act and thereby the appeal provision of the Commercial Courts Act, 2015, cannot be used be to circumvent the provisions of the Arbitration Act if no appeal is provided under the provisions of the Arbitration Act. In the *Ravi Arya vs Palmview Investments Overseas* case, the Bombay High Court ruled that when remedies are available to the party seeking an injunction under the Arbitration and Conciliation Act, 1996, an anti-arbitration injunction cannot be obtained to circumvent provisions of the Act. In the *Ssangyong Engineering & Construction vs NHAI* case, the Delhi High Court opined that if a contract can be interpreted in two ways, it is not open for the court to interfere with an arbitral award, just because the court prefers the other view, and that a court cannot substitute its view over that of arbitrators.

These judgments affirm the fact that Indian courts have taken a pro-arbitration stance with a strict adherence to the principle of non-interference with arbitral awards, and have also taken proactive steps to ensure their speedy execution, hence augmenting India's credentials as an arbitration-friendly regime that includes minimal intervention by national courts and speedy resolution of arbitration proceedings.

The potential for arbitrations in India has also changed with the reform in third-party funding, making the country all set to present itself and compete with other international jurisdictions as an international arbitration hub. The Supreme Court, in the *Bar Council of India vs AK Balaji* case, has clarified that the third parties (i.e. non-lawyers) can fund the litigation and get repaid after the outcome. This is similarly applicable to arbitration, which would go a long way in making India an arbitration-friendly jurisdiction. The availability of third-party funding offers businesses an additional financial and risk management tool, while engaging in arbitration.

However, how these new laws and rules are implemented is yet to be seen. But thanks to these new amendments, India stands on a goldmine of opportunities with respect to international arbitrations. Not only can the country become an international arbitration hub, but it can also become the most sought after international arbitration hub. Hence, the next five years are very significant, especially in terms of policy formulation and execution. Paraphrasing Robert Frost, India has miles to go before it sleeps. However, the speed with which the country is progressing, there will be a paradigm shift in its favour, and sooner rather than later.