Opinion

FRIDAY, NOVEMBER 1, 2019

STOPPING TERROR
Union home minister Amit Shah

"Article 370 had been the gateway for the entry of terrorism in the country. By repealing the Article from Jammu and Kashmir, Prime Minister played a role to establish a gate on the gateway to stop terrorism"

RationalExpectations

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RJio right on COAI; but govt made the mess

COAI can't represent industry when Jio's views are totally different, but govt didn't approach revenue-definition issue with clean hands

GIVEN THE FRAGILE state of the industry—mounting debt and falling revenues—it is not surprising that an industry association, like COAI, should want to petition the government for relief; it is also quite reasonable for it to try and use every argument to make its case, including saying that if large telcos are forced to shut shop as a result of the Supreme Court (SC) judgment on what comprises 'revenue', this could lead to a possible monopoly in the telecom sector which will have adverse consequences.

But where RJio is right in writing to COAI, and also telecom minister Ravi Shankar Prasad, is that COAI cannot possibly claim to be representing the entire cellular mobile phone industry anymore; in which case, its letters over two days are right in saying that the COAI view cannot possibly be that of the industry. Certainly, COAI represented the entire cellular mobile industry at one point, but once it decided to admit RJio as a member, and RJio's views differed dramatically from those of the other COAI members, the lobby body got less representative. And now, when RJio's revenues—data is out for all telcos only for Q1FY20—are the highest among all telcos, COAI is wrong to petition the government while talking of "the urgency of the matter to the majority of our Members" while adding that "one of our members has a different opinion on the matters covered in this letter".

It is a difficult situation that COAI and telcos like Bharti Airtel and Vodafone Idea find themselves in; they can't ask RJio to leave COAI, and RJio's presence effectively neutralises COAI as an effective lobby body for the older telcos. But until they sort it out, COAI is really on a weak wicket, and is perhaps hurting the older telcos by making representations that RJio can easily argue it is not authorised to make.

RJio is also right when it says in its letters that, as per media reports, the big telcos violated accounting norms by not providing for these possible liabilities that arose from the recent SC verdict; indeed, their auditors as well as various regulatory authorities are also to blame for not enforcing this all these years. After all, the issue has been pending since 1999 when the Vajpayee government moved telcos from the fixed-licence-fee regime to a revenue-sharing one; since the telcos were in really poor financial shape, they moved to the new regime without freezing the definition of what would be considered to be 'revenue'.

> **DoT acted in bad faith by refusing a fair discussion on the definition of revenue. Telcos lost in 2011 itself when SC said TDSAT could not rule on this as it was a licence issue. Even this would be irrelevant had govt scrapped licence fees in 2010 as telcos were paying market rates for spectrum anyway**

While the expectation was that telcos would be party to a discussion of what would be included as 'revenue' and what would be kept out, the Department of Telecommunications (DoT) approached the matter in bad faith. When the Telecom Regulatory Authority of India (Trai) recommended that non-telecom revenues couldn't be included in the definition of 'revenue', and this was ratified by the Telecom Dispute Settlement and Appellate Tribunal (TDSAT), the DoT went to SC against this. And, in 2011, the SC ruled that TDSAT couldn't rule on the issue; while the telcos bought time by approaching various high courts on the issue, the matter was effectively decided against them in 2011 itself. So, prudent accounting practices demanded that the telcos provide for these contingencies in their accounts.

And while RJio is within its rights to try and persuade the government not to give the older telcos relief on this issue, it is clear the DoT was wrong in the stand it took; and it is certainly correct to say that neither the Manmohan Singh government nor the Modi one ever bothered to try and fix the issue as they should have. Indeed, if the SC judgment is accepted as the law, the implications of this can be quite serious in other sectors as well.

If a telco makes a profit and invests this somewhere, should it pay a part of the interest/dividend it earns to the government as a revenue-share; it has, in any case, already paid the government a revenue-share on its telecom revenues. After the recent SC judgment, they will have to. But, what if this is applied to oil companies who also pay the government a revenue-share right now? Indeed, there was a furore some time ago when the taxman started levying service taxes on the amounts oilcos paid as their share of expenses to the principal oilco that was in charge of drilling/exploring the well! Telcos will have to pay license fees on gains they make from forex fluctuations but deductions are not allowed when forex losses are made; what if the taxman or the oil ministry were to apply this to other cases?

It is also difficult to buy the RJio argument that, if Bharti Airtel or Vodafone Idea were to shut down, this would make little difference to the "sector dynamics" since there is "vibrant competition including the presence of the PSUs and there is no restriction on entry by new operators". For one, the PSUs offer virtually no competition and, as this newspaper has argued (*bit.ly/2N31Vnd*), even after the bailout package, neither BSNL nor MTNL are likely to survive, leave alone offer serious competition; former Trai chief Rahul Khullar's piece (*bit.ly/2ouvrbY*) offers other arguments on why the bailout is unlikely to work.

It is obviously true the government shouldn't be handing out bailouts just because firms are in trouble; indeed, the ₹70,000 crore—it will be a lot more eventually—being wasted on BSNL-MTNL will also then be justified on the same ground of needing to maintain competition. But surely an intervention is required when the industry is failing because of government action? After all, in the same revenue-definition case, there would be no issue if the government had scrapped annual license fees (LF) and spectrum usage charges (SUC) in 2010 when it started charging the earth—and more—for spectrum; LF and SUC, after all, were introduced when spectrum was handed out for virtually nothing. Make no mistake, the sector's problems are almost wholly the making of the government—from Manmohan Singh to Narendra Modi—so it is the government's moral duty to fix this. And till it does, no matter what RJio might say, no new investors are going to come in to set up new networks in the country.

HealthCHECK

Flo and Clue show the shortcomings of health apps; fitness tracking companies need tie-ups with medical centres

WHILE RELYING ON a watch (tracker) or an app to count steps is one thing, arriving at diagnoses from readings is a shot in the dark. The news of two tracking apps misdiagnosing polycystic ovary syndrome (PCOS) confirms this. According to The New York Times, both companies have been using faulty screening methods and thin science to conclude that a user has PCOS. While Clue did not release this data, Flo recommended 38% of the users, who had completed their health assessment, to consult a doctor. With studies estimating the prevalence of PCOS somewhere between 4.6 and 8%, Flo was way off the target.

Many had dismissed Apple's announcement of tie-ups with health research organisations at this year's launch event, but what the company did is essential. Apple has launched Apple Research, where volunteers can share their health data with research organisations. For instance, in the case of heart diseases, Brigham and Women's Hospital and the American Heart Association collate data on heart rate and mobility. For women's health, Harvard TH Chan School of Public Health and the NIH's National Institute of Environmental Health Sciences (NIEHS) study menstrual cycles to inform screening and risk assessment of conditions like PCOS, infertility, osteoporosis, pregnancy and the menopausal transition. For hearing, Apple has tied up with the University of Michigan and WHO to collect data over time to understand how everyday sound exposure can impact hearing. Although this is not to trash Flo and Clue's usefulness, such apps need to be more careful with consumer-focused studies and results. With health devices and tracking apps making it easier to collect records and detect patterns, companies need to operate with the same sense of responsibility that the medical device industry does.

THROUGH THE LOOKING GLASS

IT MAY NOT BE WINNER-TAKE-ALL—FINTECHS AND LEGACY FIRMS WILL NEED TO REACH AN EQUILIBRIUM

Fintech & legacy finance, not fintech *vs* legacy finance

AKHILESH TILOTIA
Author of 'The Making of India'
Views are personal

THERE IS EXCITEMENT about fintech eating traditional finance. The incumbents are institutions with legacy systems and older-generation leadership while the new-age challengers are building models on open APIs and have modular, scalable platforms. In the new world, customer engagement is expected to hold the audience captive—this is expected to create a strong distribution pipeline via which products of increasing complexity can be sold.

A publication by the Boston Consulting Group earlier this July, "*Banks Brace for a New Wave of Digital Disruption*" talks about the need for the banks "to redefine themselves and change how they operate". However, it adds an important caveat: "given the fundamental strength of many leading multinational banks, banking's inherently high barriers to entry, and the extent of the industry's recovery since the 2008 crisis, we've concluded that many traditional banks—far from fading into the background—will actually gain strength in the coming years".

Financial services firms have been able to weather the digital onslaught even as software has been eating the world. In the case of fintechs, (a) the ease of access and engagement for customers, (b) customer-friendly user interface and user experience (UI and UX), (c) possibly lower costs of acquisitions and transactions, and (d) backing by large pools of very patient (and perhaps lenient) capital, have helped create profound changes. However, such moves have still not overwhelmed the financial services companies. I posit three reasons for the same.

Consumer versus products vector

Fintechs are playing the consumer-engagement segment—the idea is that once the consumer is hooked, a solid distribution database/pipeline can be used to sell him/her anything (whether fund transfers, flight tickets or mutual funds). Banks and NBFCs, on the other hand, are typically good at developing a financial product that they know is regulatorily compliant, and that they can sell (current account, savings account, loans, cards, insurance, etc.)—once they have a customer with one product, they try and 'deepen' the relationship.

Most financial services companies are structured as product companies (with relationship managers typically being coordination points) while fintechs are inherently "customer-oriented" where products are introduced once initial engagement builds and sustains. It is not *a priori* obvious whether focussing on the product vector or customer vector will be the dominant, winning strategy.

Introducing increasingly-complex financial products for customers to serve themselves can be challenging for a couple of reasons: (1) an aware customer for one product (say, insurance) need not be an expert for another (say, a brokerage account), and (2) as complexity increases, customers may prefer some advice, hand-holding and want a "do it for me" approach rather than "do-it-yourself".

Store of value versus medium of exchange

The product design strategy of a financial service firm revolves around 'maturity transformation', 'liquidity transformation' or 'risk transformation'. Banks take current, savings and demand deposits that offer, practically, immediate liquidity to their liability customers while offering longer-dated, somewhat more illiquid loans to their asset customers. This change in maturity and liquidity allows the bank to earn an interest spread between its cost of funds and its yield on advances, or in industry parlance, build a net interest margin (NIM) book. A life or a general insurance company is able to convert the idiosyncratic risk for an individual and pool it to reduce the risks for all.

Fintechs are not geared towards such business models which impose significant capital commitments. They are hence not regulatorily equipped to generate value in the course of such transformations. Their focus is a lot more on the immediate ease of processes and transaction experience for the customer.

> **Partnerships between financial services firms and fintechs can be symbiotic: large platforms and databases of legacy firms can meet newly-imagined UI and UX**

If we see these as the two aspects of the definition of currency, financial services companies play in the 'store of value' aspect while fintechs are in the 'medium of exchange' segment. If fintechs are unable to enter the 'store of value' aspect because of balance sheet or regulatory constraints, legacy financial services firms may be better positioned to maintain their ability to generate NIMs.

Financial services firms could hence, develop a partnership strategy with fintechs on both sides of their balance sheet (assets and liabilities) and transactions to give their customers modern experiences. However, they should also have confidence that they have the regulatory licence, social trust and capital for such value-creating transformations.

Just as rules on e-commerce (marketplace vs inventory-model) and digital taxation (as part of BEPS) have come in, it is but a matter of time when regulators get into the market-impact dynamics of fintechs. The Congressional hearings on Libra of Facebook are simply the most high-profile deep-dive on fintechs: this has the potential to spread to other segments.

Regulators of fintechs (as they emerge over time) may start to consider many types of conditions on them; for example, (a) companies may be required to be credit-rated to derive some assurance on continuity (especially, given the large losses that many of them currently run), (b) be required to list, (c) have fragmented shareholding (as is the case for banks), or (d) to serve a certain portion of social-good transactions (like a proportion of rural monthly active users, MAUs, or a certain percentage of overall transactions for such clientele), etc. Data localisation, privacy laws, etc may also impact the fintech ecosystem.

Such regulatory changes may get triggered abruptly. It will be prudent to consider that some of these changes will impact not just the fintechs but also financial services firms: it is best to remain prepared.

Financial services companies will definitely need to work on their digital strategies which should be about people, processes and technology—they need not necessarily involve replicating a fintech. Partnerships between financial services firms and fintechs can be symbiotic: large platforms and databases of legacy firms can meet newly-imagined UI and UX. Fintechs may not eat finance—they can work together to make each other more efficient and engaging.

Your turn, Facebook

Twitter will no longer allow political advertising, a move that places Twitter and Jack Dorsey in stark contrast to Facebook and Mark Zuckerberg

KARA SWISHER
NYT

THAT'S ONE SMALL step by Jack, one giant leap for tweetkind. It is not as significant as man conquering space, but Twitter's chief executive, Jack Dorsey, moonwalked into the digital future on Wednesday with a move that was both unexpected and inevitable. In a Twitter thread (of course), he declared that the company would no longer allow "political advertising on Twitter globally."

To those hoping that Mr Dorsey would also take action against one of the platform's most famous rules violators, let's make one thing clear: Donald Trump can still huff and puff away on his disingenuous digital sousaphone, but his campaign cannot pay to do so.

Still, it was a bold and epic poke that seemed aimed directly at Mark Zuckerberg, since Twitter's announcement came just as Facebook was dropping its current earnings report. While Facebook's earnings were spectacular—especially in comparison to Twitter's weaker showing a week ago—the announcement now places Twitter and Mr Dorsey in stark contrast to the social networking giant and its co-founder and CEO.

Why? Well, Mr Zuckerberg said in a disastrous series of recent appearances in Washington, DC, that his huge platform would not only keep accepting political ads, but would also allow politicians to lie in them.

Coincidence? Actually, it feels like the best subtweet ever. It is yet another example—like last year's widespread deplatforming of the conspiracy troll Alex Jones—of social media not only starting to clean itself up but also beginning to understand the major responsibility it has to the well-being of society at large, well beyond just making money.

Mr Dorsey said as much in his tweets: "This isn't about free expression. This is about paying for reach. And paying to increase the reach of political speech has significant ramifications that today's democratic infrastructure may not be prepared to handle. It is worth stepping back in order to address."

And it is worth stepping back to address this. The social media platforms have become hostage to all forms of abuse and manipulation, not just via political ads, and they've dragged us all with them into the cesspool. The growth-at-all-costs mentality of Silicon Valley, as it turns out, has costs.

Cleaning up political ads is only a start, and it is some of Twitter's low-hanging and less problematic fruit. It also relieves the company of a major headache that was yielding much more pain than benefit and could be a big public relations win. Like Facebook and YouTube, Twitter has been facing a buzz saw of criticism from the news media and regulators worldwide for the way it manages the information posted on the platform.

So why not just throw in the towel and admit that controlling this mess was not within its power or purview? Doubtless, big debates about free speech will be raised about the new policy, but no company has to sell ads it doesn't want to sell. And, as much as it feels like it is a public square, Twitter is a private enterprise that can make money any way it likes.

That was among the reasons Mr Dorsey cited in his tweets, saying that the company was much more comfortable letting people earn their reach and that paying to do so compromised that trade—which, of course, is the point of all advertising. He did note that commercial advertising was different and called political ads more dangerous since they "can be used to influence votes to affect the lives of millions." Again, that has always been the point.

Still, he presented as thoughtful an analysis as you can do in 280 characters: "Internet political ads present entirely new challenges to civic discourse: machine learning-based optimisation of messaging and micro-targeting, unchecked misleading information and deep fakes. All at increasing velocity, sophistication, and overwhelming scale."

He went on to say that regular Twitter communications also had major issues, but said that was a fight for another day. "Trying to fix both means fixing neither well, and harms our credibility," he wrote.

Mr Dorsey noted that the ban, which will take effect from November 22, will also cover issues ads, although Twitter will exempt some topics, like voter registration. And he called for political ad regulation well beyond simply ad transparency.

In effect, he made a dare to the whole internet power structure, especially to Facebook, which is the platform that matters most when it comes to politics because of the effectiveness of its ad targeting and its size.

Mr Zuckerberg wasn't having any of it when he addressed analysts on his earnings call, keeping up the same arguments that I called lightweight and reductive in a recent column.

"In a democracy, I don't think it is right for private companies to censor politicians or the news. And although I've considered whether we should not carry these ads in the past, and I'll continue to do so, on balance so far I've thought we should continue," he said, expertly but wrongly conflating free speech with paid speech and conveniently leaving out the part about allowing lies. "Ads can be an important part of voice—especially for candidates and advocacy groups the media might not otherwise cover so they can get their message into debates." His solution, noting he did not want to draw the line: "Would we really block ads for important political issues like climate change or women's empowerment? Instead, I believe the better approach is to work to increase transparency."

And now we have the big question: In this game of internet chicken, will Mr Zuckerberg eventually flinch, as he did with Mr Jones, whom he allowed on his platform until he didn't?

Well, for starters, he might want to think about a less-famous message Neil Armstrong and Buzz Aldrin left behind when they headed back to Earth in July of 1969: "We came in peace for all mankind".

LETTERS TO THE EDITOR

PM's Kevadia speech

On the 144th birth anniversary of Sardar Vallabhbhai Patel PM Modi from the foot of the giant Statue of Unity dedicated the abrogation of Article: 370 to the Iron Man of India as a 'fitting tribute' to his role in the unification of India. He described the revocation of special status to the J&K as the fulfilment of Sardar's wish. PM Modi used the occasion to hit out at Pakistan using the word 'enemy', as if no speech would be complete without going all guns blazing at them. His speech was in line with the ultra-nationalist narrative currently dominating the political discourse. It would go down well with his and his party's 'natural constituency'. PM Modi made no efforts to reach out to the alienated and dejected people of Kashmir currently observing civil disobedience and felt no need to ask his fellow-travellers to imagine themselves in the place of Kashmiris in the world's most militarised zone for a moment. As Graham Green famously put it, hatred is indeed a failure of imagination. The Run for Unity to mark *Ekta Diwas* went unrepresented by Kashmiris. He skirted the controversial visit of the EU MPs to Kashmir lest it would lead people to wonder if Sardar would have allowed or approved of such a visit. To be fair, he did not link the bifurcation of J&K and downgrading it into two separate UTs to India's first Home Minister. Prime Minister Narendra Modi's emphasis on 'one nation, one identity' was a give-away that the momentous move in Jammu & Kashmir was intended to 'homogenise' the region rather than 'to integrate' it with the rest of the country. The *Hindutva* resurgence cannot alter the fact that India is a land of many races, religions and cultures. India has evolved so heterogeneously over aeons of history that it is simply not amenable to be homogenised by use of political power.
— G David Milton, Maruthancode

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GLOBAL HUNGER INDEX

India's GHI conundrum

Government initiatives to enhance incomes, improve child survival, as well as nutritional outcomes can only solve a part of the GHI puzzle

The Global Hunger Index Report 2019 ranks India 102 among 117 countries. When it comes to GHI scores, the country has been consistently improving. From securing a score of 38.8 back in 2000 (alarming category), the score has gradually improved to 30.3 (serious category). Understandably, the rate of overall progress has been tardy. But in order to analyse India's performance from a rational and objective vantage point, there is a need to break-down the GHI into its component indicators: the proportion of undernourished children, the proportion of wasted and stunted children and proportion of under-five deaths. A trend analysis of these specific indicators shows that India's relative performance across all the dimensions has been consistently improving since 2000, with the exception of wasting. That said, the most promising performance has been in terms of the reduction in under-five deaths.

This can be explained by the government's commitments towards meeting the WHO's Millennium Development Goal 4 and Sustainable Development Goal 3 of reducing child mortality. The launch of the National Health Mission by the Union government as a pan-India comprehensive health scheme, which focuses on improving specific indicators like neonatal, infant and under-five mortality rates, has been instrumental. Another key focus area of the Mission is the higher impetus provided to the vaccine immunisation programs, which has further helped reduce preventable disease-related child mortality. An increase in budgetary allocation for child health services coupled with a greater attention to enhancing institutional deliveries has significantly contributed to increasing child survival rates. The progress can be evidenced by the increase in the proportion of institutional births, which have nearly doubled from 38.7% in 2005-2006 to 78.9% in 2015-2016. Research shows that education and awareness are both directly linked to child survival and health. Accordingly, the Anganwadi services scheme has significantly helped in creating awareness with regard to better childcare like breastfeeding practises, vaccinations and so on.

Given its limited fiscal space, the government's child health policy prioritised ensuring survival over other aspects (like wasting, stunting)—and has achieved appreciable results. The next logical step involves shifting focus towards tackling the incidence of under-nutrition, especially among the surviving children based on the first 'survive' and then 'thrive' strategy advocated by the World Health Organisation. To this end, initiatives like Poshan Abhiyaan and the Food Fortification Program have been launched. However, unlike macro-economic indicators, social indicators reflect results with a lag. The impact of these initiatives should be more visible in the years to come.

There are two significant and related inferences that can be drawn based on India's progress in reducing its U5MR. First, the significant strides in bringing down the U5MR has led to an increase in the absolute number of surviving children. But since these surviving children are undernourished, undernourished children in absolute numbers have increased. This is one of the reasons for the slow progress in terms of reducing the burden of child under-nutrition in India.

The second factor is based on the understanding that social indicators are inextricably linked. The government has significantly concentrated on ensuring child survival from the time of birth and thereafter. But undernutrition is not just a function of inadequate access to health and nutrition from birth and thereafter. Poor nutritional outcomes among children are also directly correlated with poor maternal nutrition and health.

The social indicator of contention here is gender inequality. Gender inequality is a complex concept and is a result of a chronic and long history of strongly ingrained gender stereotypes and norms. The social fabric is what determines how a society treats its women. In contrast to physical outcomes, the mind-sets of a population are more resilient to change. This is what defines South Asian enigma: the alarmingly high incidence of under-nutrition in South Asian children despite lower poverty rates and better access to food and healthcare vis-à-vis sub-Saharan countries owing to the prevalence of gender discrimination. This stems from the premise that India and other South Asian countries are traditionally patriarchal societies where females suffer from stark socioeconomic inequalities. They have low and unequal access to family incomes, healthcare and nutrition throughout their lifetime. An obvious consequence of such gender-based discrimination is maternal malnutrition, anaemia and low body mass index (BMI) of women. Such women tend to give birth to pre-mature and low-birth-weight children, who are undernourished and have a high susceptibility to morbidity and mortality. A major explanatory factor for India's high incidence of child under-nutrition is, therefore, the widespread prevalence of gender discrimination.

Government initiatives to enhance incomes, improve child survival, as well as nutritional outcomes can only solve a part of the GHI puzzle. More importantly, there is a social urgency to address the prevailing asymmetry between men and women in our country. A greater responsibility for expediting this transformation rests upon our male counterparts who as a matter of fact tend to pay a higher price for child under-nutrition. First, due to gender discrimination practised by men against women, which leads to maternal malnutrition, both girls and boys fall prey to poor nutritional outcomes. Furthermore, given that males are biologically more prone to morbidity and mortality throughout their lifetime, the effects of under-nutrition are all the more pronounced for them. Any way forward toward saving our children would therefore first involve eliminating the long-standing deprivations experienced by our women.

Following the protocol

SUMANT BATRA

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The Cross Border Insolvency Protocol fills a gap, but is not a comprehensive law

THE INSOLVENCY AND BANKRUPTCY CODE has faced grave implementation challenges in the last three years. This is neither unexpected nor surprising. What is definitely disappointing is that some of these implementation challenges could have been prevented based on international experience.

It was widely expected that the cross-border insolvency provisions would be part of the IBC or enacted soon after. While reviewing the Insolvency and Bankruptcy Bill in the year 2016, the Joint Parliamentary Committee (JPC) expressed concern that the Bill did not address this. Noting the international element of many corporate transactions and businesses, JPC in its report recorded that the implications of cross-border insolvency cannot be ignored if India is to have a comprehensive and long-lasting insolvency law. "Not incorporating this will lead to an incomplete Code", the report further stated. Unfortunately, the cross border insolvency provisions did not find place in the IBC.

Many large cases undergoing insolvency, such as, Amtek Auto, Videocon Industries, Essar Steel, Jet Airways and others are confronted with complex cross-border issues. Absence of a framework to deal with cross-border insolvency is likely to result in significant loss in value of assets of such companies. The government has shown no urgency to enact the law.

Eventually, the judiciary had to step in to plug this gap in the case of Jet Airways insolvency. In May this year, a Dutch Court passed an order of insolvency of Jet Airways on a petition of creditors based in Netherlands and appointed a Trustee. Jet Airways has its regional hub in Schiphol Airport. A month later, while directing admission of SBI petition under the IBC for commencement of insolvency process against Jet Airways, the NCLT directed the Interim Resolution Professional to ignore the order of Dutch Court and Trustee. Recognising the threat ignoring Dutch Court and Trustee pose to a sustainable insolvency resolution outcome of Jet Airways, the NCLAT advised exploration of a framework of cooperation. After extensive negotiations, a Cross Border Insolvency Protocol (Protocol) was agreed upon.

> Most sophisticated economies have well developed cross-border insolvency laws. Adoption of the UNCITRAL Model Law is a necessity and not an option for India

Designed on the principles of UNCITRAL Cross Border Insolvency Model Law, the Protocol provides a framework of international coordination, while respecting the independent jurisdiction, sovereignty, and authority of the NCLT/NCLAT and the Dutch Court. The Protocol recognised that given Jet Airways was an Indian company with its centre of main interest in India, the IBC proceedings are the main insolvency proceedings and the Dutch Proceedings are the non-main insolvency proceedings.

The Protocol seeks to promote international cooperation and coordination of activities to provide for their orderly and timely administration in order to reduce cost; promote communication among the parties and the committee of creditors; and provide, wherever possible, for direct communication among NCLT, NCLAT and Dutch Court; provide for the sharing of relevant information and data among the parties to avoid duplication of effort and activities; to identify, preserve, and maximise the value of Jet Airway's worldwide assets for collective benefit of all.

The Protocol was approved by the NCLAT in September and viewed as a historical development by the international community and signals a rapidly maturing insolvency market in India. It is likely to benefit the outcomes in Jet Airways and set a healthy precedent for similar cases. While the Protocol plugs a huge gap, it is in no way a substitute for a comprehensive cross-border insolvency law. Most sophisticated economies have well developed cross-border insolvency laws. Adoption of the UNCITRAL Model Law is a necessity and not an option for India.

Correcting perception

Over two-thirds of the ₹31,830 crore of miners money in government's Distric Mineral Foundation remains unutilised

RK SHARMA

Secretary General, FIMI

TO DIRECTLY MEET the needs of community residing near mining operations, the Centre in 2015, by inserting Section 9B in MMDR Act 1957, established District Mineral Foundation (DMF). Government mapped 583 districts in 21 mineral rich states and so far 557 districts have already set-up DMF.

Till August 2019, government has accumulated ₹31,830 crore under DMF and ₹26,685 crore has been allocated for different welfare projects. But the fact remains that about 70% of the funds accumulated remain unutilised. Only about ₹9,555 crore has been spent so far to complete 45,523 projects.

As per the Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY), 60% funds are to be utilised for high-priority sectors.

The fact remains that till August 2019, of the 1,33,214 projects sanctioned under DMF, 23,804 projects are yet to start. 57,349 projects are in various stages of completion and 6,538 projects have been scrapped.

Mining companies in each of the States of Odisha, Jharkhand, Chhattisgarh, Rajasthan, Telangana and Madhya Pradesh have contributed over ₹2,000 crore in DMF till August 2019.

Odisha has been the highest contributor in DMF, about ₹8,253 crore. But, out of 12,664 projects sanctioned, only 5,438 projects have been competed, 4,130 are on-going, and 3,096 are yet to start. But Odisha has not scrapped a single project.

Similarly, Jharkhand, the second highest contributor in DMF, with about ₹4,585 crore, has 16,519 projects sanctioned and all the projects are in pipeline, but not a single project has been completed.

Chhattisgarh has been the third largest contributor with about ₹4,435 crore contribution in DMF. Out of the 31,657 projects sanctioned, the highest in the country, Chhattisgarh has completed 20,025 projects, 10,184 are on-going and 1,448 projects have been scrapped.

The fourth largest contributor in DMF is Rajasthan with ₹3,092 crore. 16,640 projects have been sanctioned, 6,418 projects are yet to start, 3,088 have been completed and 4,708 projects are on-going. Rajasthan has scrapped 2,426 projects.

Telangana has about ₹2,632 crore. Out of 15,201 projects sanctioned, 3,464 have been completed, 4,987 are yet to start and 6,741 are on-going. Only 9 have been scrapped.

Madhya Pradesh has ₹2,556 crore. It has 51 districts (largest). Out of 8,453 projects sanctioned, 3,431 have been completed, 2,679 are ongoing, 2,061 are yet to start and 282 projects have been scrapped.

Communities believe that mining companies are not doing enough. Slow progress in implementing social projects under DMF is denting companies' perception. Government should, thus, form a body of Indian mining companies to make a concrete action plan, along with the state governments, to spend DMF funds gainfully. FIMI being an apex body of miners would be happy to take lead in this government initiative.

Well-governed India

Strong corporate governance is a must for long-term business sustenance of Indian enterprises

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THERE ARE SEVERAL cases where companies and promoters have gone bust in recent times and one can't help wondering as to what exactly went wrong. Was there a lack of corporate governance culture that led to such a situation?

But a scrutiny in several cases often points to violation and lapse in corporate governance. While most public sector companies, large private sector firms (including MNCs) are known to invest in setting up a dynamic corporate governance framework; the same cannot be said for smaller and mid-size domestic companies.

In small and mid-sized entities, the tendency is to focus on the top line and dismiss the bottom line. In the process, investment in ethical organisational culture and governance structure is often ignored and is seen as a 'cost center'. This attitude could be avoided during the first five years of the company's life cycle.

In a growing start-up eco-system, a robust mechanism is a must to safeguard from collapse of the ecosystem.

Good corporate governance reflects a strong emphasis on risk management, enhanced transparency and greater stakeholder engagement. The Companies Act, 2013 and the Companies Rules, 2014 are efforts to ensure financial sustainability and enhance shareholder value. A strong corporate governance framework not only reflects strong emphasis on risk management, enhanced transparency and greater stakeholder engagement, but also ensures improved decision-making abilities and risk management capabilities along with protecting interest of all stakeholders—investors, employees, customers, suppliers and the public at large.

Sebi has released a new format of compliance report on corporate governance, but tit is only applicable for top listed companies. Even the amended Companies Act has provisions to strengthen the corporate governance framework, but is still loosely defined. Hence, avoidance is becoming a norm and statements such as 'why incur the cost when it is not mandated by law' often resonate in boardrooms.

Corporates are well advised to adhere to the guidelines and framework to build a strong foundation for itself and survive the changing landscape of business environment. Lastly, putting a robust corporate governance should not be taken as a cost center. Corporate governance will come with a cost, but the benefits far outweigh the cost.

Having said, we have to also differentiate between diversions of funds, and, thus, categorise certain loan defaults as fraud. If there is no fraud then filing of bankruptcy should be allowed. For instance, in the US if there are losses you are allowed to file bankruptcy under Chapter 11. The culture of being too harsh too harsh on corporate losses and failures, will kill the spirit of entrepreneurship. Issues of corporate governance need to be dealt with appropriately. The diagnosis of the intent is very important for a judgement call on such issues.