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BECAUSE THE TRUTH INVOLVES US ALL

A code for resolution

Three years on, Insolvency and Bankruptcy Code is learning from outcomes, growing stronger



SOUMYA KANTI GHOSH

IN 2016, INDIA embarked on a landmark reform of providing a robust platform for resolution of troubled corporate entities. In principle, insolvency and bankruptcy are covered in the Seventh Schedule under the Concurrent List in the Constitution, allowing both states and the Centre to develop the legislative framework. However, in India, there is no state legislative history regarding either insolvency or bankruptcy in the post-Independence period, an important departure from the US. All such Indian post-Independence laws have their origins in UK laws.

Till the year 1985, the legal framework for dealing with corporate insolvency and bankruptcy in India consisted of only one law — the Companies Act, 1956. In 1985, the Sick Industrial Companies Act, 1985 (SICA), followed by the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBFI) under which debt recovery tribunals (DRTs) were established and finally, the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act (SARFAESI) was enacted in 2002. Around the same time when the SARFAESI Act was introduced, the Reserve Bank of India introduced a corporate debt restructuring scheme that provided broad guidelines for banks. It was thus clear by the year 2010 that a single, comprehensive framework was needed to effectively tackle delay in insolvency and bankruptcy proceedings.

This 60 years of Indian experience in insolvency resolution (till the IBC came into existence) suggests a similar story as in the US, where the first bankruptcy law was passed on April 4, 1800. Over time, however, almost all the efforts prior to the IBC failed to meet expectations. The success rate of companies under several regulations pre-2016 was abysmally low and varied from 16 per cent to a maximum of 25 per cent. In contrast, the success rate of companies under the IBC in terms of a closure is already at 41 per cent and increasing. The recovery rate is 43 per cent, up from 12 per cent in FY15 through other mechanisms with defaulting promoters losing control of the company. The Essar judgement, assuming a provision of 80 per cent, could potentially result in a provision writeback of more than Rs 30,000 crore for

the banking system.

There are, however, a few trends that merit attention. Firstly, the number of cases admitted through Lok Adalats and DRTs has declined significantly post introduction of the IBC. As an example, the IBC platform is now being used by operational creditors (48 per cent of the cases admitted). Given the very small threshold limit of Rs 1 lakh, operational creditors seem to be more aggressive in dragging the corporate debtor into the NCLT, eating up the bandwidth of the court and thereby delaying resolution of the bigger cases and defying the main objective of the IBC. It is high time that the government seriously rethinks increasing the threshold value substantially from Rs 1 lakh and increasing the number of NCLT benches with a preponderance of more erudite professionals who understand the financial system better. This will ensure that the IBC platform is not used as a recovery but more as a resolution tool.

Secondly, it is observed that more than 23 per cent of the admitted companies ended with liquidation. One way of viewing it is that at the time of low demand and economic downturn there are not enough buyers of the stressed assets. Regulations must be made allowing foreign portfolio investors (FPIs) to acquire stressed rupee loans directly instead of going through an asset reconstruction company (ARC) and allowing eligible external commercial borrowing investors to fund the acquisition of stressed companies both under the IBC and outside it.

In fact, as companies are admitted into liquidation, the employees on the rolls of the company are only cumulatively compensated till the resolution process is completed, while the contractual employees are downsized. This could also act as a constraining factor on consumption growth and thus it is essential that we find a quick resolution (average resolution time is of 324 days as on March 2019).

Thirdly, it is also observed that sectors such as construction, EPC, electricity, where there are no hard assets, are also being dragged to the NCLT and such companies are mostly liquidated. Efforts should be made to find a resolution of such companies outside the NCLT as these could save resources and time for hard-pressed NCLT benches.

Fourthly, will the IBC facilitate the development of the corporate bond markets in India? After the IBC came into force, the SEBI chairman in a summit organised by CII in August 2017, said: "From an investors' standpoint, an effective and robust bankruptcy regime is important for developing the corporate bonds market. Investors have been shying away from low-rated corporate bonds and even if the rating is of investment grade, given the high rate of defaults".

The recent empirical work on links between corporate bond markets and the bankruptcy system predicts that safe firms will issue bonds but higher risk firms, for whom insolvency is more likely, issue bonds as long as bankruptcy is efficient. Clearly, this might require more analysis in the Indian context but there is evidence already.

Finally, where the IBC has been largely successful, in countries like China and Japan, culture has played a crucial role. As an example, Japan makes bankruptcy a personal, not business, failure. This characterisation of bankruptcy in Japan often leads to tragedy for the individual, be it isolation from family or otherwise. Culture also plays a substantial role in Chinese laws. In Chinese society, the notion of bankruptcy has long been condemned as "bad luck". If a father owes a debt, his sons or grandsons would be responsible for it; bankruptcy implies living with a burden for generations to come.

Is Indian culture any different? Interestingly, in India, ordinary households take it upon themselves to repay their debt (household debt to GDP is lowest across all countries at 11 per cent of GDP). Thus, culture is indeed important. But in the larger context, two things are imperative to making the IBC successful in India.

First, learn from outcomes and strengthen the code so that the law is robust over time. This is currently being done. And, the ultimate test for culture is when promoters themselves approach the IBC for resolution for the benefit of all stakeholders.

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QUALITY OF LENDING

Sharp rise in bad loans under Mudra is cause for concern. RBI should step in to examine extent of fallout

THE PRADHAN MANTRI Mudra Yojana has often been held up as the solution to India's job problem. It was expected that the scheme, which entailed the provision of collateral-free loans, would spur both entrepreneurship and job creation in the country. But not only has its performance on creating new jobs been underwhelming — a report in this paper showed that not every loan translated to new jobs — there are now grave doubts over the quality of the loans extended as well, with a sharp rise in the number of loans turning non-performing. On Tuesday, RBI Deputy Governor MK Jain voiced concern over rising bad loans under the scheme. "While such a massive push (Mudra) would have lifted many beneficiaries out of poverty, there have been some concerns at the growing level of non-performing assets (NPAs) among these borrowers," he said.

Loans under Mudra fall under three categories: Shishu, which covers loans up to Rs 50,000; Kishore, for loans between Rs 50,000 and Rs 5 lakh; and Tarun, for loans between Rs 5 lakh and 10 lakh. At the end of 2018-19, Mudra loans worth Rs 8,93,000 crore had been sanctioned by Member Lending Institutions (MLIs), Anurag Thakur, Minister of State for Finance, said in reply to a question in the Rajya Sabha. Of these, only 2 per cent or Rs 17,651 crore had turned non-performing. But, in the subsequent six months, there has been a sharp rise in bad loans. As reported in this paper, the number of bad loans in the Kishore category has more than doubled, rising by 107 per cent at the end of September 2019, over March. In value terms, bad loans have surged by 71 per cent in this category. In the Tarun category, too, bad loans have risen to Rs 3,425 crore in September, up 45 per cent from Rs 2,353 crore in March. The Shishu category has also seen a spurt in the number of bad loans, though of a lower magnitude.

Several factors could have contributed to this spurt in bad loans. Poor credit appraisals and lack of monitoring by banks, wilful defaults, and the growing inability to pay back obligations due to a slowing economy could have all played a part. But, coming at a time when banks are struggling to resolve their existing pile of non-performing loans, this spurt in bad loans under Mudra may end up becoming another source of vulnerability for them. While the political overtones of the scheme are hard to dismiss, the RBI should examine the implications for the financial system more closely and step in if necessary.

A NEW CAST

By choosing an upper caste politician to lead it, the RJD sends out a political signal in turbulent times

THE CHOICE OF Jagdanand Singh, a Rajput, to lead the Rashtriya Janata Dal may be a snapshot of change, a reflection of the compulsions the party is facing in the current political moment. Singh, 74, a seasoned politician, associated with the socialist movement in Bihar since the 1960s, has been a founder member of the RJD and minister when Lalu Prasad was chief minister. He is also the first upper caste politician to lead the RJD since it was formed in 1997. His unanimous election earlier this week is being read as an attempt by the party to reach out to sections of the society, particularly the upper castes, which have, all these years, been seen to oppose it.

This outreach could be an indication that the RJD finally acknowledges that it has reached the limits of identity politics. Since the Mandal driven realignment of political forces in the 1990s, the RJD projected itself as a bulwark of the politics of secularism and the custodian of lower caste interests in Bihar. Yadavs and Muslims formed the core of this support base that included a spectrum of backward castes and Dalits. Though the Mandal consensus that briefly united the backward castes and Dalits disintegrated following splits in the Janata Dal, the Muslim-Yadav math helped the RJD to continue to win assembly elections. However, the layered politics crafted by the BJP since the advent of Narendra Modi in national politics, combining the Hindutva agenda and hard nationalism, has shown a trans caste appeal which has breached the core constituencies of several caste-based parties, including the RJD. With Lalu ailing and in jail, the RJD leadership has found itself short of ideas, tactics and a charismatic leader to challenge the BJP narrative and contain its spread even among the Yadavs. When a similar unravelling of Mandal politics took place in UP earlier, the SP and BSP had tried to broaden their appeal by building pan-caste alliances.

Is the RJD planning to emphasise the class dimension in politics now, especially since there is a view that its opposition to the 10 per cent quota for the poor among the forward castes may have hurt its prospects in the May general election? It has already promised to reserve 45 per cent of the party posts for the Extremely Backward Castes and Dalits. The party now seems to want to build a broader social coalition and pitch a larger tent.

GOOD MORNING

Trump greets the world dressed in Rocky Balboa's washboard abs. He offers no explanation

ON WEDNESDAY MORNING, two world leaders reached out to the world. German Chancellor Angela Merkel shared a clip of a speech on the meaning of freedom in the digital era. US president Donald Trump shared a picture of his head grafted onto the bare body of Sylvester Stallone as Rocky Balboa. Merkel's communication was meaningful, while Trump's was perplexing, except to his following, who would get the semiotic instantly.

Having failed to convince the world that he is doing enough about the Russians, with this image — doctored for the age of fake news — Trump has entered the lists in the war of chests, washboard abs and all. Avid outdoorsman Putin, who has bared it proudly in several photo shoots, is his most celebrated competitor. But there are others. In a world that seeks strongmen, there will be more.

Trump has a bipolar relationship with movie boxers. Earlier, he had accused his critic, Robert de Niro, of being concussed from acting in too many boxing movies, starting with *Raging Bull*. Now, he has chosen to merge with Stallone. But this is politically clever, because Rocky Balboa, played by Stallone, is one of the most inspirational speakers ever, and his quotes are still as current as Chuck Norris facts. A popular example: "It ain't about how hard ya hit. It's about how hard you can get it and keep moving forward. How much you can take and keep moving forward. That's how winning is done!" That was a harangue to his son. Balboa was harder on himself: "I gotta problem I gotta fight!" For a populace bamboozled by fake news and MAGA-ness, such clarity and sense of purpose is the universal nostrum. Even Putin would approve, though he wouldn't dream of taking it on the chest. Being intelligent, he would sidestep.

BASTION FOR HUMANISM

First-generation learners at JNU are beacons of hope for their communities



BINOY VISWAM

CAMPUSES ALL OVER the world have been breeding grounds of ideas and activism. How can one forget the student activism in Paris that frightened the French ruling class in the 1960s? During the Vietnam war, campuses in the US were centres of the anti-war movement. Students in Latin America have waged heroic struggles against fascist dictatorships.

One needs to look at recent developments in JNU from this perspective. JNU signifies ideas, values and commitments that are fundamental to the idea of India. That is why the happenings in JNU are of relevance beyond its campus. Many campuses in India, not just JNU, have become centres of study and struggle. These include the FTII and IITs.

Commercialisation and communalisation are the twin threats to the Indian education system today. Neo liberal globalisation has created such challenges. This threat has become more acute with the RSS-backed BJP in office at the Centre, and in several states. The imprint of the Sangh Parivar is prominent in syllabi from the school level to universities — and in the administration of universities as well.

The entry of students from backward sections to institutions of higher learning did not happen in one day. It was the outcome of years of struggle to make education a right — not a privilege. Such struggles opened the gates of institutions like JNU for the daughters and sons of the weaker sections across India. Reservation in education, an outcome of these struggles, was a progressive step.

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Today, most of the students who enter campuses like JNU belong to socially and educationally backward families. In many cases, these first-generation learners become beacons of hope for their communities. In JNU, 71 per cent of students avail various scholarships sponsored by agencies like the UGC, CSIR, DBT and the university itself. Such a shift in social composition of students is a matter of pride for the country.

The Sangh Parivar's ideology makes it biased against the poor and lower castes. Today's Ekalavyas compete with children from wealthy and upper caste families. How can the Sangh Parivar tolerate this? Its agenda on access to education, which was hidden for long, has come to the fore since the Sangh captured political power. Their strategy is to oust students from poor, backward and minority families from the campuses. It tried to ignite ultra nationalism to counter the popularity of Kanhaiya Kumar and spewed venom on all who did not agree with its ideology.

The winds of hatred sponsored by the Sangh have created havoc in universities like Allahabad, Jadavpur, BHU and Aligarh. Now, a new onslaught is in the offing. It seems to be more planned and brutal. As expected, JNU has been made the testing ground of this brutality. The proposed rise in hostel fees, to the tune of 300 per cent, is aimed at forcing many poor students to drop out of the university.

The JNUSU, the representative body of the students, is not being allowed to function. A

few days ago, this writer visited the campus to express solidarity with the students and was greeted by a notice from the registrar urging him not to go near the administrative block as section 144 had been imposed there.

After the sit-in strike, when the students came out for a peaceful march, the government responded in a cruel manner. As night fell, the police switched off streetlights and mercilessly beat up students without sparing even the differently-abled students. Such attacks bare the government's nervousness about a vibrant campus. This campus has produced not only left-minded leaders and academics but also eminent intellectuals like Abhijit Banerjee and leaders like Union Finance Minister Nirmala Sitharaman.

JNU and other campuses are expected to remember what Jawaharlal Nehru once said about universities: "A university stands for humanism, for tolerance, for reason, for the adventure of ideas and for the search for truth." The government has diametrically opposite views about universities. Hence, this is a struggle between ideologies. On one side are the students and their comrades who are committed to a search of knowledge and protecting diversity and scientific temper. And on the other side is a government armed with a majoritarian ideology mortgaged to markets and profits.

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NOVEMBER 29, 1979, FORTY YEARS AGO

KERALA DRAMA

THE CHIEF MINISTER C H Mohammed Koya has recommended the dissolution of the Kerala Assembly followed by mid-term polls. Koya, whose support in the 140-member assembly plummeted from 71 to 49 following the decision of the Congress to move over to the opposite camp, has, however, chosen not to resign pending a final decision on his recommendation to the governor. The chief minister, who called on the governor early in the morning, told reporters in the evening that at the time he recommended dissolution, he had a majority in the Assembly. "Even now the Congress has not formally informed me of the withdrawal of its support," he said.

US HOSTAGES

DESPITE AMERICA'S PRODDING, India has decided to keep aloof from the confrontation that is building up between Washington and Teheran, it is learnt. The government has not responded one way or the other to President Jimmy Carter's appeal to use its good offices for the release of hostages in Teheran. To save itself from embarrassment, New Delhi has allowed its ambassador to Iran, Vishnu Ahuja, to return from his post, long before he leaves for Tokyo on his new assignment. A few feelers at lower levels from some powers to show solidarity with "diplomats of all nations" have gone awry.

DANGE'S ON INDIRA

SRIPAD AMRIT DANGE, who has just resigned from the chairmanship of the Communist Party of India, feels that the party has "failed to understand Mrs Gandhi as a representative of the patriotic national bourgeoisie which is intrinsically anti-monopolist, anti-imperialist and anti-feudal". In a note, dated November 23, to the members of the central executive committee and the national council of the party, Dange regrets that the party has adopted "a self-liquidationist line". He laments that a section of the party leadership is "falling into the Sino-CPM net despite the lessons of 1959." However, he is confident that "we will soon repent".



