Opinion

FRIDAY, DECEMBER 13, 2019

TAKE AWAYS

Prime minister of India, Narendra Modi

"I want to assure my brothers and sisters of Assam that they have nothing to worry after the passing of #CAB. I want to assure them- no one can take away your rights, unique identity and beautiful culture"

Long-overdue legal cover for IBC-buyers

Investigating agencies like ED etc seizing properties of firms sold via IBC was threatening to derail the process

THE GOVERNMENT HAS done well to initiate an amendment to the Insolvency and Bankruptcy Code (IBC) that would shield prospective buyers of stressed assets from prosecution for offences committed by previous owners. In the absence of such protection, buyers were becoming apprehensive; indeed such a problem threatened to surface in the case of Bhushan Power and Steel. If the IBC has come such a long way, much of the credit must go to the NDA government for tweaking the rules of the code in timely fashion so as to protect the banks and ensure errant owners are not able to get their way. Had it not been for the government's prompt action, many of the cases might not have been resolved, including the high profile Essar Steel case where the erstwhile promoters were trying to regain control of the business claiming they were eligible to do so. Again, in June 2018, the rules for related parties were tightened with the list being expanded to include many more relatives such as grand daughters and grandsons. Lenders have been empowered to approve a plan with just 66% of the voting share from 75% earlier facilitating speedy resolution.

However, this paper has not been in favour of home buyers being accorded the status of financial creditors as it could lead to the process being stalled with vested interests taking over. In fact, the government has just initiated an amendment to prevent frivolous bankruptcy filings. From now on, if any proceedings initiated by financial creditors such as homebuyers or bondholders, the application needs to be filed jointly by a minimum 100 creditors belonging to the same category or not less than 10% of the total number of such creditors, whichever is lower. Also, all allottees need to be beneficiaries of the same real estate project. This provision was badly needed to prevent a handful of creditors taking up the matter in the NCLT and disrupting any other solution. Along with the government, the Supreme Court (SC) too has played a key role in the evolution of the IBC. The apex court's landmark judgement in the Essar Steel case re-established the primacy of secured financial lenders as the final arbiters of how sale proceeds from a stressed asset are to be distributed. The ruling came in the wake of operational creditors staking a claim to a bigger share of the spoils. The SC verdict was a big win for lenders, who despite their top place in the waterfall mechanism, were fighting other stakeholders. In fact, given how various benches of the NCLT have been interpreting the rules differently, it is important the SC weighs in on the matters from time to time. While the corporate insolvency resolution process (CIRP) has picked up pace with the total number of cases close to 2,550 in September, 2019, and every quarter since Q4FY17 having seen a rise in admissions, the bad news is that a very high number—23%—of the companies have been liquidated. In fact, just 42% of the value of claims admitted of ₹3.32 lakh crore has been realised by financial creditors. Recently, the framework of the IBC was expanded to include financial services providers, under Section 227, an excellent move given the crisis in the NBFC space. Although this is an interim measure, it highlights how responsive the government has been to the need of the hour.

A regulatory Google-y

Allowing defamation case against the company has repercussions

THE SUPREME COURT (SC) ruling that the 2009 amendment of the Information Technology (IT) Act that provides a safe harbour to digital intermediaries wouldn't apply to a pre-amendment defamation case against Google opens a regulatory Pandora's box. Visaka Industries, an asbestos sheet manufacturer, had filed a complaint against Google in 2009 before the amendment to the IT Act in October that year. The amendment, among other things, protects internet intermediaries from liability for offences like defamatory content posted by third parties on their platform, under Section 79. Visaka had issued legal notices to Google, asking it to take down a post made on Blogspot (Google's blogging service) made by the Ban Asbestos Network India that targeted it, claiming that Google had exponentially amplified the reach of the defamatory statements, without taking due care. Google had moved the Andhra High Court, but didn't get any relief. Now, the SC's ruling means that the safe harbour provisions in the IT Act won't be available to cases filed before the October 2009 amendment. The apex court seems to have given scant regard to the incongruence that results from an intermediary being simultaneously held liable and not liable for user-posts deemed defamatory, depending on the date of the post. Such regulatory schizophrenia militates against established principles of justice delivery. And, as important, it affects business confidence in the law of the land.

However, it is not just the SC ruling that is fuelling uncertainty. It is also the fact that the government itself has proposed a set of amendments that strips the protection the intermediaries enjoy. In December 2018, it had invited public comments on the draft Intermediaries Guidelines (Amendment) Rules that called for, among other things, intermediaries to "deploy technology based automated tools or appropriate mechanisms, with appropriate controls, for proactively identifying and removing or disabling public access to unlawful information or content". While what could constitute unlawful information or content is defined to an extent in the proposed amendment, qualifiers like "grossly harmful, harassing, blasphemous, defamatory, obscene" that have been used lend themselves to wide interpretation. That apart, proactive identification of unlawful content will mean that the intermediary has to screen content in a manner that could run afoul of the law on privacy—while companies are doing it on the basis of user reports so far, proactive identification could also be heald to mean that certain intermediaries that assure end-to-end encryption to users will have to find a way to decrypt posts. Apart from the ramifications this has for privacy, it will usher in a regime of censorship. Also, the draft rules are quite in line with the draft personal data protection law when it comes to intermediary being required to allow access to user information and provide assistance to the government in investigations. As this newspaper has pointed out, such sweeping powers for the government, without the right checks, would amount to gross violation of privacy. The SC order on intermediary liability, read together with the draft rules' provisions on proactive screening, respective privacy policies and sharing of data with the government, effectively means Google and other intermediaries are trapped in a devil-deep sea situation.

Documenting BIRTH

India has a large birth registration gap, Unicef's five-step plan could help bridge this

A RECENT UNICEF report, *Birth Registration for Every Child by 2030: Are we on Track?*, states that one in four children under the age of five—around 166 million—do not have birth registration owing to factors, ranging from lack of resources to investments in civil registration systems to policy and institutional obstacles. Over the decade, birth registrations went up from 63% to 75%. This is in line with SDG 16.9, which calls for providing legal identity to everyone by 2030. The increase in birth registrations has been due to the improvements in the South Asia region, especially India, Bangladesh and Nepal. India alone accounted for a huge rise, from 41% in 2005-06 to 80%. However, half of the unregistered births have been accounted for by five countries—India (14%) has the highest numbers. States like Bihar, Arunachal Pradesh, UP and Jharkhand recorded the lowest birth registrations.

In India, the problems range from poor infrastructure and awareness to the availability of multiple proxies. All of these may not be official, but still manage to find acceptance. Unicef proposes a five-step action plan. All children should be registered at birth through a universally accessible system. All parents should be empowered regardless of their gender to register their children, and to link them to social services. It also suggests the use of safe and innovative technology to enhance registrations. Finally, it makes the case for communities at large to demand birth registration. Birth registrations are fundamental to basic rights being ensured for each new born in the country; it is imperative state governments take note of the gaps and address these as not registering will cascade into deprivation of basic healthcare, educational and other social services.

THROUGH THE LOOKING GLASS

AS THE CENTRE AND STATES TRY TO FIND GST COMPENSATION CESS MONIES, IT IS TIME TO LOOK BEYOND THE PRESENT, TO SEE HOW THE FUTURE COULD UNFOLD FOR STATE FINANCES

State finances: Finding the monies

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Views are personal

THE FINANCIAL RELATIONSHIP between states and the Centre has been in news recently. The Fifteenth Finance Commission submitted its report to the president; there have been some delays in payment of the GST compensation cess, and there were some discussions on whether the Centre will honour its commitment of assuring a 14% revenue growth in the agreed-upon transition period.

Constitutionally, Centre-State fiscal relations come up for review quinquennially (once every five years). States have ceded significant taxing powers to the Centre via GST. Earlier, the states had their own tax bases and could manage revenues by juggling taxation policies. This led to a large number of state-specific tax rates, a lack of uniformity in the tax structure in the country, and sometimes, a race to very low-tax regimes to attract investments—and hence, a move towards GST. On the other hand, such flexibility allowed the state governments to create their own fiscal policies which could be more suited to their needs: it also made the states, especially the non-special-category ones, less dependent on fund flows from the Centre.

While the states have a say in GST rates, one-third voting power for the Centre means that it has a casting vote to reach a three-fourths majority in case decisions needs to be taken by voting. The GST Council has, till date, taken decisions by consensus. Large sources of direct funds remaining for the states are non-GST goods, property taxes and stamp duties. Over time, non-GST goods like petroleum, natural gas, aviation turbine fuel, alcohol and electricity may also move into the GST framework to complete the input tax credit cycle.

This can leave states dependent on the Centre for a significant portion of their revenue inflows for funding their expenditure. If there is a slowdown of funds at the Centre, or if there is any misalignment between the priorities of the Centre and the states, the fund-flow situation at the states could become challenging. Since chief ministers are expected to deliver on their promises, the states are face a near-continuous requirement of funds. Note that the states have built-up a lot of "committed expenditure", mostly on account on salaries (including pensions) and a plethora of social services that belong on the state list. The states also have defined fiscal deficit and debt targets that they cannot breach.

Over time, the states will again seek to build buoyancy in taxation. The only way for the states to keep to deficit and debt targets when expenditures are committed and growing is to increase revenues. Once the five-year GST transition period of committed annual 14% growth in revenues is over (in 2022), states may be required to find themselves new sources of revenues. We look at some possible sources that might come up: citizens and businesses should also remain cognizant about such scenarios.

Better efficiency in tax collection: Better implementation of existing taxing powers of the states by promoting greater compliance, making tax collections more user-friendly, and identifying taxes with large potential, say property taxes. The Economic Survey 2017 had identified that the states (and the cities) do not do a thorough job in identifying, assessing and collecting property taxes—it had mentioned that "Bengaluru and Jaipur are currently collecting no more than 5-20 per cent of their respective potentials for property tax."

Better collection on state services: The states offer various services to its citizens like transport, water, electricity, schooling, primary health care, etc. User charges (in places which, and for citizens who, have the ability to pay), long recommended by economists, could start to become an important revenue source for state budgets. Many services may see refinement in eligibility criteria to sharpen targeting to genuinely-needy. As average incomes increase, the ability of citizenry to pay increases and requirement for subsidised services could reduce. Many areas which are currently completely in the purview of state governments (say transport services) could partially open up for private sector participation.

> **The only way for states to keep to deficit and debt targets when expenditures are committed and growing is to increase revenues**

Finding new sources of tax funds: Necessity could be the mother of innovation: whatever one state does, it could quickly get copied across other states. Such taxes could be levied on products currently out of tax-net, or on goods and services that may be perceived to be luxury or 'sin goods', or be based on new ideas (like say congestion pricing). State-backed lotteries or similar new products/services can create a revenue potential for the state. There are very few state PSUs that could be disinvested for meaningful sums of monies—in any case, these 'receipts' will be one-time and only available to a few states which may have such PSUs. Possibly, the states could start their own social-security collections?

Land sales or value-capture: Chinese cities created a significant revenue base for themselves by selling land in the city and on its periphery. Whether by issuing TDRs, or by allocating higher FSI near public infrastructure creation (like a metro station), or by charging a well-documented premium for converting agricultural land to non-agricultural (NA), states can come up with new solutions on these.

Debt: Along with all the cash flow initiations/optimisations that we discussed above, states could look at their debt-raising ability and its profile—after all fiscal accounting in India is cash-based and not accrual-based. A recent OpEd in *FE* highlighted that Telangana is now borrowing more long-term to avoid the short-term roll-over pressures. Over time, many other states could come to similar conclusions: long-dated papers of state government could start to come to the markets.

These trends will emerge not only because of the current news flow on Centre and state fiscal relations but also because as India prospers, its tax-to-GDP ratio could increase to the levels of OECD countries—this will require both the Centre and the states to come up with new ideas, reasons and methods of collecting the monies.

EU'S GREEN DEAL

Don't slide into central planning

The challenge is not only to limit warming but also to align the massive state intervention with the EU's market economy

ANDREAS KLUTH
Bloomberg

TWO CHEERS FOR the EU, which on Wednesday embarked on the world's most ambitious effort to ameliorate climate change. Ursula von der Leyen, president of the European Commission, revealed her goal to make the EU carbon neutral by 2050. We need visions on that scale to save our planet.

But let us hold the third cheer for March, when the details start coming out in reams of legislation that will touch every aspect of Europe's economy and society. For the challenge is not only to limit warming but also to align this massive state intervention with the EU's market economy—to assure human survival but also prosperity. The EU mustn't accidentally slide into central planning, especially if others—China, India, the US—are ever to emulate the effort.

State intervention is certainly justified. The ongoing rise in greenhouse gases is history's most terrifying example of what economists call an "externality," a cost not reflected in the price of goods and services because it is borne by third parties, which in this case is all of us. This means that the best policy is to make the externality visible in prices. All prices. And the best tools for that are taxing carbon or putting a price on it.

Europe already uses both tools, though insufficiently. It has an emissions trading system, for instance, in which polluting industries, such as cement makers or airlines, buy and sell allowances to emit greenhouse gases. This gives them an incentive to make their production cleaner, so they need to spend less on certificates or get paid for selling their allotments.

Von der Leyen's best idea is to dramatically expand this system. The allowances for airlines, who are among the worst polluters, will be cut, raising their carbon costs (and thus ticket prices, which should lead to less flying). Shipping will also be included. Henceforth, firms in ever more industries will have to invest in technologies to cut emissions in order to stay competitive. This is market economics at its best.

The same policy also shows how intervention smashes into other economic values, such as free trade. Europeans already "consume" more carbon than the EU's firms emit. You can view that as the EU "importing" carbon from other countries, or "outsourcing" emissions to them. If the EU were now to raise carbon prices only in Europe, EU firms would become less competitive relative to the world's, and even more carbon would be imported. Some Europeans would lose their jobs. And the earth wouldn't benefit.

That is why Von der Leyen is right to plan "carbon border adjustments". These are basically tariffs on imports based on how much greenhouse gas was emitted in their production. That sounds simple, but contains political and logistical dynamite. Measuring the carbon in stuff made inside the EU is already difficult. How exactly will we account for the goods from elsewhere?

As to the politics, a case could be made to the WTO that the new tariffs do not discriminate. They simply aim to put firms inside and outside the EU on similar footing, without changing their relative prices. But try telling that to China or the US, at a time when they're already waging trade skirmishes.

In principle, a high enough carbon price (or tax) should be enough state intervention, because consumers, producers and investors would all adjust to that signal. But Von der Leyen wants to go far beyond price signals, and that is where it gets tricky. She wants to make available—how is unclear—an additional 260 bn euros a year indefinitely.

It is certainly fine for the public sector, including the European Investment Bank, to fund basic research. After all, that is how the internet, among other things, was invented in the US. But governments are no better than private investors, and usually worse, at picking winning technologies. Should the EU lead in battery production? Perhaps. But maybe fuel cells are the future, or something else we can't name yet. Governments should certainly never pick winners among companies. But that is the risk in vague promises to subsidise, support or otherwise coddle "European champions". Von der Leyen promises an "industrial policy" that is allegedly necessary to fight climate change and to compete with China and the US. In practice, firms will compete more as lobbyists than as innovators.

That is also the problem with the Commission labelling certain firms as environmentally more virtuous, in order to privilege their securities as "green bonds". There's even talk about the European Central Bank, which is already buying 20 billion euros worth of securities a month to keep interests low, to favour green ones (over the "brown" sort?). But that would exceed its mandate, which is to preserve price stability. It has no business guiding an ecological transition.

If Von der Leyen wants to help green, or any, innovators raise money, she has better options. One is to complete the long promised "capital markets union". Another is to perfect the so-called "single market", which may exist for goods, but not many services. If firms can get funding from, and sell to, the whole EU, they will thrive faster and greener.

Von der Leyen is on firmer ground again when she proposes a "just transition fund" to the tune of 100 billion euros over seven years. All change creates winners and losers, and this is the biggest since the industrial revolution. To maintain social and political cohesion, government must compensate the losers. In the EU, that means buying off countries like Poland that still rely on coal for their energy. Even so, you can expect the Poles to resist the Green Deal at this week's European summit. The existential challenge of our time is to reconcile ecology and economy. To do that the EU, and the world, should aim for as much market as possible and as much state as necessary. The solution, if humanity finds one, will lie in our ability to change our lifestyles and to innovate: by finding ways beyond planting trees to suck carbon out of the air for storage; by redesigning cities so we move around more efficiently; by using less energy and getting more of it from the sun and wind; and much, much more. The Commission must let, rather than make, that happen.

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LETTERS TO THE EDITOR

On outcomes of CAB

With Citizenship Amendment Bill 2019 passed by the Narendra Modi government despite protests and violence across the country by giving citizenship to refugees from Pakistan, Bangladesh and Afghanistan, it is a dark day in the constitutional history of India. I strongly feel that with this bill, which is unconstitutional and dangerous, the Modi government has played vote bank politics putting the Indian minority community, like Muslims, completely isolated and considering them as the second class citizens of the country. The fact of the matter is that the country under present regime is heading for the disaster with divisive politics which may break the country in parts on the basis of caste and religion in no time. It is high time this Bill must be challenged by all the opposition parties in the Supreme Court immediately before the country is destroyed due to protests and violence in various parts.

— Bhagwan Thadani, Mumbai

BHU's professor fiasco

Protest by BHU students over the appointment of Firoz Khan as a professor to teach Sanskrit has now forced him to step away to the Sanskrit programme at the Faculty of Arts. While he was qualified enough to teach Sanskrit, his appointment invited backlash from the students because of his religious affiliation. His step down has shown the BHU administration in poor light. It should be noted that without the energetic intervention of translators from Muslim dominated Middle East and Central Asia, none of our Sanskrit literature would have reached other parts of the world. As one of ancient languages of the world with rich literature, it cannot be reduced to the stiflingly narrow rubric of a religion. Denying a professor the right to teach just because he is a Muslim is a blow to the progressive, liberal and secular character of one of the tallest academic institutions of the country.

— M Jeyaram, Sholavandan

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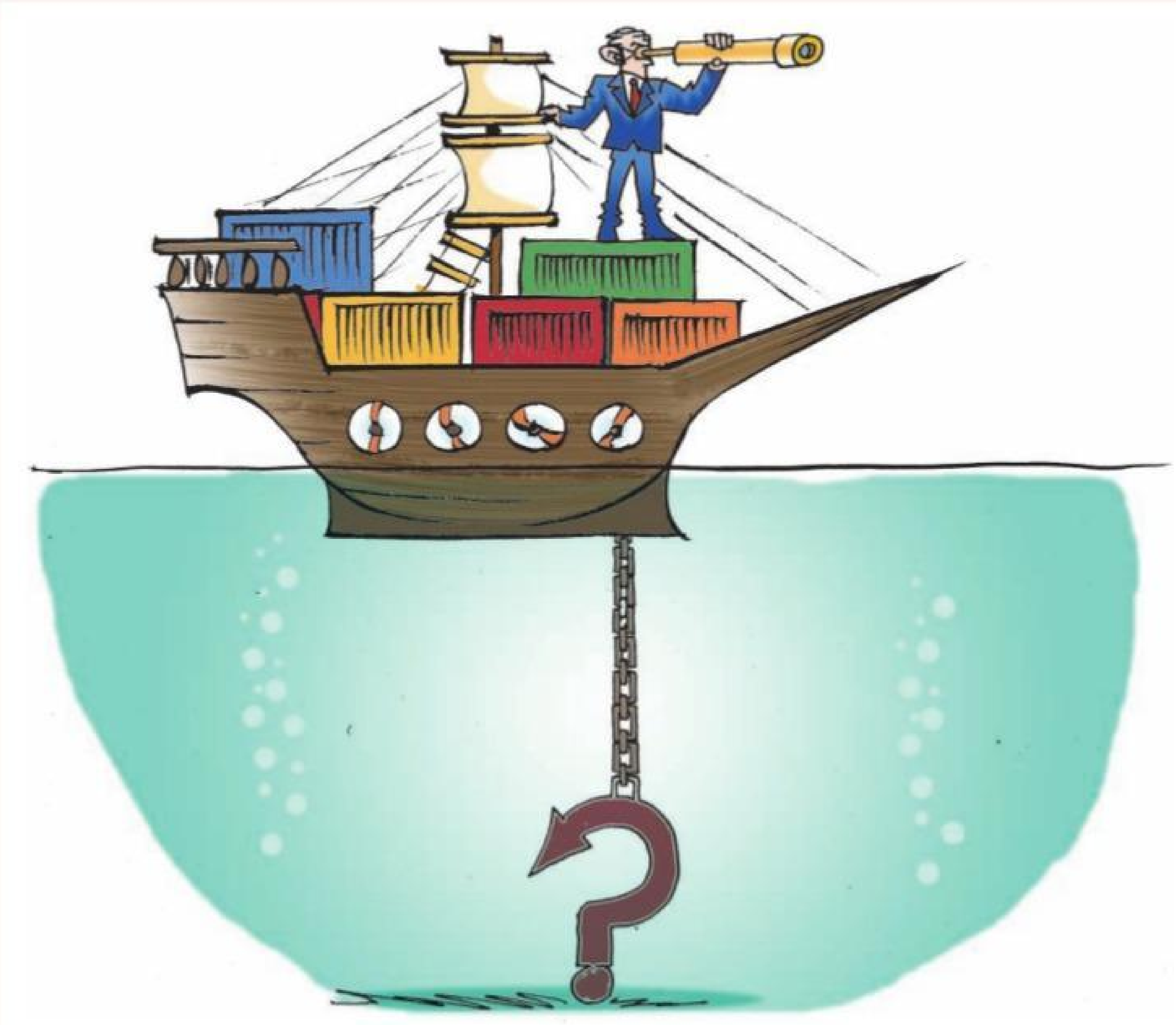

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BACK TO THE PAST

Energising India's external trade sector

In an environment of trade wars and protectionism, India can improve demand for its products by either developing new markets, or developing comparative advantages in products for which there is external demand, or being part of global value chains

WITH THE GDP growth rate falling to 5% in the Q1 of 2019-20, and forecasts suggesting a further fall in the Q2 of 2019-20, there is an urgent need to look at all the demand drivers of economic growth, because that is what is driving the current slowdown in the short run. One of the key channels of demand is the external one. In fact, the year-on-year growth rate of exports and imports of goods and services fell to 1.5% and (-)6.9% in the Q2 of 2019-20, versus 26.1% and 32.9% in the Q1 of 2018-19, respectively. Essentially, we ask two questions in this article. First, what may India do to increase its growth rates of exports and imports? Second, does India have mechanisms present for gainers from trade to compensate losers as it opens up externally?

The current state of affairs is worrisome, especially when we look at it in the context of Indian economic history. We find that the ongoing decade has seen a fall in the average growth rate of exports and imports, but their shares to GDP have risen. The average growth rate of exports in 2010s is lower than in the past two decades, and the average growth rate of imports is the same as in the 1980s. Of course, world trade has also slowed down in the current decade, especially after the 2008 recession. Steps such as demonetisation and the implementation of the goods and services tax (GST) in India took a toll on the Indian external sector. But then how does one explain the rise in the shares of exports and imports. This is a puzzle and clearly a problem for a low-middle income country. In 2017, the share of Indian merchandise exports in total world merchandise exports was 1.7%, and imports was 2.5% (World Trade Organisation, WTO). India ranked 20th in merchandise exports, and 11th in merchandise imports that year. The Indian share in total exports of commercial services was 3.5% in 2017, and for imports it was 3%.

There is both theoretical and empirical evidence in the economics literature that trade is beneficial for economic growth. India's own economic history proves that infant industry arguments do not really work. Also, the presence of China cannot be held as an argument to hold back India from opening up, because internationally other countries like Bangladesh and Vietnam are benefiting from opening up their economies. However, there are always certain groups within a country that gain from international trade and others that don't. Mechanisms may be found for gainers to compensate the losers.

One needs to look at the supply and demand sides of both exports and imports to answer the first question. Export supply and import demand are affected by Indian GDP, prices and exchange rates, etc. Export demand depends on rest of the world income, prices and exchange rates. Import supply is assumed to be perfectly elastic.

The recommendations to improve supply of exports have been articulated many a times—improve the competitiveness of Indian products in the global economy. That would involve steps like investing in physical and digital infrastructure, revamping labour laws, filling the skill gaps, facilitating the availability of land at market prices, limiting the administrative procedural delays with regard to various steps involved in setting up or expanding units.

Can India try and improve demand for its products in an environment of trade wars and rising protectionism? It can, by either developing new markets for its products or developing comparative advantage in products for which there is external demand, or being part of global value chains (GVCs). Doing the latter two takes time. As Saon Ray and Smita Miglani's book '*Global Value Chains and the Missing Links: Cases from Indian Industry*' points out, India's engagement with GVCs has been limited, and India's imports are dominated by intermediate imports. The World Development Report 2020 notes that "a 1% increase in GVC participation is estimated to boost per capita income by more than 1%, or much more than the 0.2% income gain from standard trade."

The short-run solution is to find India new markets for its exports. In that context, not joining the Regional Comprehensive Economic Partnership (RCEP) may prove to be a costly mistake. Not being part of the RCEP essentially means that, in the short run, 20% of our weak external demand is further dampened. This argument is also supported in a general equilibrium framework in a paper submitted by the National Council of Applied Economic Research (NCAER) to the High-Level Advisory Group (HLAG) appointed by the government of India. Plus, the withering away of the WTO (The Economist, November 28, 2019) means that India is not a part of any significant multilateral trade block.

India must focus on trying and finding out new markets in the short run, and in the medium term improve both export supply and demand conditions

The second topic is that of exploring mechanisms to compensate groups that do not directly benefit from opening up of trade. Worldwide, there are two ways—either we give unemployment benefits and/or reskill them for different professions. India is in the process of developing fairly sophisticated systems for both. Here, identification of the beneficiaries would not pose a problem. Direct benefit transfers may be used as a mechanism to provide unemployment benefits for a particular period of time to people losing jobs from opening up of India's external sector. This can be combined with subsidised upskilling and reskilling programmes.

Therefore, the answer to the first question is trying and finding out new markets in the short run, and in the medium run improve both export supply and demand conditions. In response to the second question, India is developing quite rapidly in both social security and skilling mechanisms.

GROWTH RATES

Decadal average of (%)	GDP growth	Exports growth	Imports growth	Share of exports	Share of imports
1950-51 to 1959-60	3.9	-0.1	5.0	5.5	7.3
1960-61 to 1969-70	4.1	1.8	0.4	3.6	5.6
1970-71 to 1979-80	2.9	10.6	7.9	5.1	4.9
1980-81 to 1989-90	5.7	4.8	7.6	5.8	6.9
1990-91 to 1999-2000	5.8	12.0	13.3	8.2	10.1
2000-01 to 2009-10	6.3	14.3	14.0	17.0	19.2
2010-11 to 2018-19	7.0	7.6	7.4	22.5	26.0

Source: Authors' computations from MoSPI

Growth folly?

MEGHA JAIN

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Is it right to consider GDP as the 'universal proxy' for growth?

IN THE PAST decade, the global climate crisis pushed away 20 million inhabitants per year from their households (equivalent to one every two seconds), as per the recent Oxfam report (2019) and COP25 Madrid summit. Undoubtedly, rising severity and frequency signal towards negative weather externalities. Given this backdrop, the current economic slowdown pressure might force the 'climate agenda' to take the back seat. It is in this context that the Kuznets curve hypothesis should be the focal reference point to find answers on the growth paired climatic depletion. This postulation establishes that climatic pressure increases up to a certain level as economic growth goes up, but after a threshold the relationship reverses. Essentially, 'growth' can't be construed to serve the present at the risk of future generations. So, the question is: Should GDP (materialistic) be considered as the sufficient measure to proxy economic, human and social growth (non-materialistic)?

There is evidence of noteworthy contribution by Sen, Stiglitz, Daly and Nayyar since the 1990s to link growth and income inequalities to contain emissions where they primarily contest the very structure of globalisation, and hence the GDP yardstick to revamp its basic discontents. They are of the opinion *to treat GDP as an input, a means to an end, and certainly not the end itself*. Probably GDP is the easiest, safest and linear of all the available measures that have adequately worked so far for India. But, at the same time, it is pertinent to identify as to what could substitute the de facto GDP measure in order to have an umbrella perspective?

The above could be partially answered by reports reference of OECD and UNDP, suggesting better measures such as Human Development Index (HDI) and Better Life Index to gauge *economic well-being with equity* for any nation. In fact, the recent HDI ranking has placed India at 129th rank in 2019 vis-à-vis 130th in 2018, despite falling economic growth that further confirms the relevance of replacing or using the right proxies to benchmark economic, environmental and social balance-sheet of any nation. In 2006, the New Economics Foundation suggested yet another human well-being and environmental indicator, i.e. Happy Planet Index. It is premised upon factors such as life expectancy and ecological footprint per capita, and one subjective indicator 'life satisfaction'. Further, the Economic Freedom Index by Heritage Foundation and Fraser Institute could really prove handy to comprehend the economic and political stances of any nation. Likewise, Genuine Progress Indicator (proposed in 1989) could be a superior measure to proxy the growth and well-being of individuals, primarily in the field of ecological economics. It is often debated that it is impossible to achieve sustainable decision-making aiming at sustainable progress and economic well-being if welfare is being considered from a purely financial point of view.

Alternatively, adjusting GDP to factor-in contemporary qualitative factors like environment and social could be a *sustainable* way forward. Tangible factors such as 'quality of life' and 'ecological integrity' could be less objective but more sustainable to capture negative externalities (economic 'bads') of increased consumption that expands the current GDP but indubitably jeopardising the future level. Actually, it has to be a *measure of economic welfare* instead of *economic growth* to assess the economic health of a nation.

Unquestionably, using 'GDP' has clear advantages. So, attempting to abolish GDP would be neither feasible nor recommendable. Still, economic activity decoded as GDP growth is leading the world back towards the brink of collapse. There is a growing global consensus that GDP does not provide a good measure of overall economic performance, at least in the long run. The classical GDP philosophy of 'the bigger the better' doesn't prove beneficial any more. Also, climatic disaster is an indisputable threat multiplier and certainly not going to discriminate. Therefore, there is an emergency to retreat the globalisation structure itself so as to have sustainable and egalitarian growth globally, as Stiglitz suggests. What matters is whether growth is sustainable and whether most citizens see their living standards rising year after year. Needless to mention, the world is in a dire need of new goals and ways to estimate progress towards these goals. Additionally, there is a requirement of global dialogue and consensus to opt for the appropriate economic measure as a global standard and also to keep a check, so as not to fall into the trap of *stagflation* similar to the GDP crisis of the 1970s. Time is running out for mankind. Probably a broader perspective on the measurement of economic and social progress could enlighten the sustainable way forward.

E-PHARMACY RULES

Clear regulatory direction needed

The government, it appears, hasn't acknowledged the observable distinctions between offline and online models

ABHINAV SAIKIA & APARAJITA BHARTI

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E-PHARMACIES, IN recent years, have been able to fulfil unmet medical needs of the large Indian population by enabling access to affordable medicines to people in remote areas. In addition, they are also ensuring efficacy, transparency and reliability in delivering these items. Despite their noticeable advantages, e-pharmacies in India operate in a grey area from a regulatory standpoint. They have found themselves facing several litigations following concerns raised by traditional offline chemists and entities from the medical fraternity. To remedy this, the government resolved to introduce the final version of the draft e-pharmacy rules of the amended draft Drugs and Cosmetics Rules, 2018, within 100 days of its formation as part of its 100-day agenda.

Subsequently, the Rules were approved by two committees, the Drugs Consultative Committee (DCC) and the Drugs Technical Advisory Board (DTAB), this year. Despite this, the government has been unable to reconcile the demands of online and offline pharmacies within these Rules, leading to further delay in formalisation.

Stakeholder concerns

Although the Rules seek to mitigate regulatory confusion and bring about a measure of uniformity in registration and licensing of all pharmacies, both offline and online, various stakeholders have taken objection to different aspects of the law. They have argued that the Rules do not provide sufficient clarity on FDI norms. This is partly due to the vague definition of e-pharmacies in the Rules that do not distinguish between the marketplace and inventory-based models. They feel FDI provides unfair advantage to e-commerce entities who are incentivised to introduce offers and discounts on medicines and offer them at cheaper prices. They fear that predatory pricing can hurt local players.

Another objection that the All India Organisation of Chemists and Druggists (AIOCD), a lobby group comprising 8 lakh offline chemists, has put forward is that the Rules allow snapshots of prescriptions to be uploaded (while the original Drugs and Cosmetics Act requires the original prescription to be submitted). According to them, not only does this water down the prescription verification system, but they also allege it will likely help facilitate fraud, such as allowing consumers to forge or reuse prescriptions, resulting in exploitation of prescription drugs.

Licensing and monitoring clauses are yet another area of concern. Though the Rules provide that the e-pharmacy business premises will be periodically monitored by the central and state licensing authorities, this will be hard to impose given how e-pharmacies are websites anchored online. The resulting ambiguity has thrown up questions as to whether e-pharmacies will require separate licences to operate across multiple states, so as to allow state authorities—who traditionally regulate drug sale—to monitor them?

Brick-and-mortar stores are not alone in their concerns, e-pharmacies too have voiced issues, such as ambiguity around clauses of state licensing and FDI norms. They also find the Rules compliance-heavy in many respects. For instance, the Rules dictate that e-pharmacies record large amounts of data for every transaction and drugs dispensation verification on submitted prescriptions, which makes compliance extremely onerous and will result in poor-quality customer experience.

Another pressing concern is the Rules' prescription regarding securing customer data. In order to address the issue of data security, the Rules prohibit disclosure of information gathered through the online platform and do not make any exceptions for such data to be shared internally for improving the functionality of platforms.

The Rules insist all e-pharmacy portals operating in India should be registered in India and the data generated by them be stored and processed locally. E-pharma organisations, such as Myra, have expressed concerns that such a requirement would hinder local companies from sharing critical information with drug manufacturers who maybe based abroad. Certain Indian pharma companies are of the opinion that more clarification is required on how doctors will access records data hosted on these platforms.

The data localisation requirements in the draft Rules are also not in sync with either data processing requirements provided in the soon-to-be-tabled law on data privacy, the draft Personal Data Protection Bill, 2018 (PDP Bill), in its current form nor the proposed regulation for health data under the Digital Information Security in Healthcare Bill, 2018 (DISHA). While the PDP Bill allows cross-border flow of health data, on the prerequisite that the individual has explicitly consented to it or because the transfer is necessary for emergency services, DISHA does not provide a mandate for localisation of data. Such difference in requirements can lead to regulatory confusion for handling health data for privacy purposes.

The way forward

The draft Rules comprise of some ambiguous clauses and in some cases restrictive norms that can hurt both offline and online pharmacies. The government should ideally leave the subject of localisation of health data under the purview of the PDP Bill, and provide more clarity with respect to ambiguous norms, such as FDI and state licensing. In drafting these Rules, the government has largely adopted norms relating to offline chemists and has not acknowledged the observable distinctions between the offline and online models. E-pharmacies come with multiple advantages such as increased selection, less information asymmetry, vast reach, better tracking systems and more effective consumer redressal mechanisms. This is an opportunity to correct the huge imbalance in availability of drugs across the country riding on the increasing internet penetration. Given the huge positive externalities associated with e-pharmacies, it is imperative for the government to create an enabling regulatory environment for them to thrive.