Legislative adventurism

A proposal for a new law on bank resolution has already raised many troubling questions

RAISINA HILL

A K BHATTACHARYA

On November 15, 2019, the government brought about a significant change in the Insolvency and Bankruptcy Code (IBC). It notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (Rules) to provide a generic framework for insolvency and liquidation proceedings of systemically important Financial Service Providers (FSPs) other than banks.

It was clarified then that the new rules would apply to such FSPs or categories of FSPs, as will be notified by the Union government under Section 227 of the IBC from time to time in consultation with appropriate regulators, for the purpose of their insolvency and liquidation proceedings. Remember that the IBC had been legislated in 2016 to provide a consolidated framework for reorganisation, insolvency resolution and liquidation of corporate persons, limited liability partnerships, partnership firms and individuals in a time-bound manner.

This was an interim measure. The government had indicated then that the notification of the rules for financial service providers under Section 227 of the Code was "an interim mechanism to deal with any exigency pending the introduction of a full-fledged enactment to deal with financial resolution of banks and other systemically important financial service providers."

Thus, the special framework for financial service providers had three key features. One, these did not include banks. Two, consultation and active involvement of the existing regulators were made mandatory before any insolvency and liquidation proceedings could be initiated for any financial service provider. And three, a separate legislation was being planned for dealing with insolvency resolution and liquidation of banks and other financial service providers.

Within weeks of this framework, the government appears to have acted quite fast in starting internal deliberations on the promised legislation, which is expected to be more comprehensive than the rules framed under Section 227 of the IBC. Contours of the new legislation have not yet been made public by the government. But an online financial publication, *Moneylife*, has brought out the key features of the new law on insolvency and liquidation proceedings for banks and financial service providers. Thomas Franco of the All India Bank Officers' Confederation or AIBOC has also outlined the provisions of the proposed law in a programme on *NewsClick*, an online video news network.

The proposed name of the new law seems to be the Financial Sector Development and Regulation (Resolution) Bill. A similar proposal for a law, Financial Resolution and Deposit Insurance Bill (FRDI), was mooted in 2017, but was withdrawn a year later in 2018 after massive protests over its "bail-in" provisions. These provisions had envisaged that depositors' money would be used to recapitalise banks in financial trouble. Even assurances that the cap on the amount of deposits protected by insurance would be raised had failed to assuage the concerns of the people and the idea of the Bill was dropped.

The new Bill is believed to have discarded the use of any bail-in provisions, but has given the resolution authority the power to cancel, modify or amend the contract between a bank or a financial service provider and the customer. The extent of the amendment or curtailment of the contract would be determined by the resolution authority, which would be composed of representatives from the existing financial sector regulators. In other words, the bail-in provision has been replaced by an equally problematic clause that allows the depositors' contract to be modified by the resolution authority. Fears of bank customers losing their deposits in the event of a bank becoming insolvent have only grown.

The new Bill is also likely to have a provision for raising the cap on the amount of deposit that would enjoy insurance cover. The deposit amount to be brought under insurance coverage would be decided by the resolution authority, though no details of how these calculations would be undertaken are known. Even more worrying is the reported provision in the new law, as per which the resolution and liquidation of public sector banks would be undertaken in consultation with the government.

Given the sequence of these events in the last two months, it seems that the government is readying itself to face yet another major controversy over a new law. Shouldn't the government have undertaken broader consultation among stakeholders to frame its thoughts on the kind of legislation it should introduce on insolvency resolution for banks? Its earlier attempt at bringing a similar law had led to protests and the government had to withdraw the FRDI Bill. Should it not have learnt appropriate lessons from that episode?

What next, Reliance Home Finance?

This is no default caused by liquidity tightness. It could have been avoided had the loans to group companies not been given. Period.

BANKER'S TRUST

TAMAL BANDYOPADHYAY

In its forensic audit report of Reliance Home Finance Ltd (RHFL), Grant Thornton, a globally known firm for audit, forensic and investigation services, has not recorded any adverse findings on 11 parameters, including any diversion or siphoning of funds, embezzlement, falsification of accounts and fraudulent transactions by the promoter, the company, its employees or any associates. The company's statement said so last week.

RHFL's lenders had appointed Grant Thornton for the audit in August 2019, in accordance with the Reserve Bank of India norms for resolution of bad debt. "The forensic report has confirmed the potential group entities' exposure through several intermediate unlisted entities at ₹7,984 crore (including interest). The company had voluntarily and publicly disclosed even before the commencement of forensic audit to its auditors, regulators, lenders...," the RHFL statement said.

After the completion of the forensic audit, the company now wants its bankers to fast-track the debt resolution plan "under change of management and control in the overall interests of all lenders, including over 20,000 retail non-convertible debenture holders and over 800,000 shareholders".

RHFL claims to have disclosed to all stakeholders potential related party transactions to the tune of ₹7,500 crore — close to 60 per cent of its total debt. Is on-lending to group companies (supposedly to repay their liabilities on interest and principal) a normal business transaction? Is a home finance company lending more than half its balance sheet to its group companies in sync with the spirit of the agreement between the company and its lenders?

RHFL has defaulted on paying at least ₹2,000 crore of public debt. The money raised from normal business and securitisation and flowed to group companies could have easily taken care of its debt repayments. Would the firm have been in default if such group lending had not happened? Should the lenders be penalised for the troubles in the group companies to whom RHFL has extended business loans?

Incorporated in 2008, RHFL marked the Anil Dhirubhai Ambani Group's entry into India's expanding mortgage market. It had a presence in financial services through Reliance Capital, a non-banking finance company (NBFC), which until some time ago, had a triple-A rating.

RHFL, Reliance Capital's wholly-owned subsidiary, hired Ravindra Sudhalkar from Kotak Bank in October 2016 as its CEO. Listed on stock exchanges in September 2017, RHFL grew at a compounded annual growth rate of around 44 per cent from fiscal year 2014 to 2018 to stack up ₹16,380 crore assets under management (AUM).

In September 2018, the AA+ company's gross bad loans were just 0.8 per cent and AUM was ₹16,460 crore. Its investor presentation for the quarter ended June 2018 indicates that 51 per cent of the AUM consisted of loans for affordable housing, 20 per cent loan against property and 29 per cent construction finance. The scenario changed dramatically, coinciding with the default of Infrastructure Leasing & Financial Services, which triggered a crisis of confidence in the NBFC sector. The September 2018 investor presentation and subsequent investor disclosures stopped showing the break-up of its AUM.

In June 2019, its statutory auditors PwC resigned, stating delay in convening an audit committee meeting and certain observations on a few transactions for which the company apparently did not offer satisfactory response. PwC had also filed a letter with the Ministry of Corporate Affairs, under Section 143(12) of the Companies Act 2013. Under this section, if an auditor has reason to believe that a fraud is being committed against the company by its officers or employees, the auditor must report it to the central government immediately.

The company has disputed this allegation of PwC (through a press release on August 8, 2019). Audit firm Dhiraj & Dheeraj stepped in but it too gave a qualified opinion with respect to its financial statements as on March 31, 2019, stating significant deviations on loans advanced under the "general-purpose corporate loan" to certain entities, including group companies, aggregating ₹7,850 crore.

"Majority of company's borrowers have undertaken onward lending transactions and end use of the borrowings from the company included borrowings by or for repayment of financial obligation to some of the group companies. There have been overdues of ₹566 crore of these loans as on March 31, 2019. We are not getting sufficient audit evidence to ascertain recoverability of principal and interest including time frame of recovery of overdues," it had said while highlighting the shift in the primary business of the company — from housing finance to non-housing finance (more than half of its total loan portfolio).

From October 2018, RHFL faced a slew of rating downgrades — dropping to D in April 2019 from AA+ in September 18. In April 2019, the bank facilities were downgraded to D. This rating indicates that the issuer has defaulted or is expected to be in default soon. By September 2019, all outstanding debt instruments had been downgraded to default status. During this period, certain directors, during whose regime "group companies" had been lent money, started resigning. Anil Ambani's son Jai Anmol Ambani resigned as non-executive director on May 31, 2019.

In July 2019, RHFL entered into an inter-creditor agreement (ICA) with its banks, led by Bank of Baroda. Such a framework has been prescribed by the RBI for prompt identification and resolution of stressed assets. The ICA proposed the so-called standstill agreement which refrains banks from initiating any recovery proceedings. The banks, however, continued to receive interest payments for a few months and did not classify RHFL as a bad loan. They appointed BOB Capital Markets and E&Y as resolution professionals, Deloitte as cash flow monitoring agent, Grant Thornton as the forensic auditor and RBSA Advisors as the valuer.

Typically, under this framework, the resolution plan is not known at the time of framing the ICA. If the resolution plan, being worked out, is not acceptable to the bank, it gets the liquidation value, estimated by the valuer. Simply put, a bank does not know the liquidation value while signing the ICA. This process is on.

RHFL is not a default caused by liquidity tightness or lack of funds available to a housing finance company. It could have been avoided had these loans to group companies not been given. Period.

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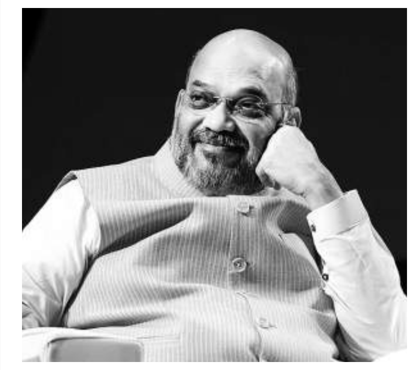
CHINESE WHISPERS

Shah & CAA



The Bharatiya Janata Party (BJP) has rolled out a pan-Indian itinerary to counter the Opposition narrative around the Citizenship Amendment Act (CAA). The campaign will kick off in Uttar Pradesh with Union Home Minister Amit Shah (*pictured*), Uttar Pradesh Chief Minister Yogi Adityanath, Defence Minister Rajnath Singh, etc addressing pro-CAA rallies. On January 21, Shah is arriving in Lucknow to address a public meeting, one of the six planned for UP in this phase. The rally will cover all the districts in central UP's Awadh region. The state party organisation has started preparing for the mega event to showcase the BJP's purported stand that the silent majority was always supportive of the new Act.

Pressing matter

Representative bodies of journalists are bracing themselves to legally contest entry curbs imposed by the government on accredited finance ministry reporters on entering North Block. The Press Council of India (PCI) has decided to hear a complaint from various journalist bodies, including the Press Association, Press Club of India, and Foreign Correspondents' Club against the finance ministry, which imposed these curbs in July last year. The Press Association has been summoned by the PCI for a hearing on Monday and journalists may argue that the diktat has sparked a fear in the minds of bureaucrats to officially meet them. They may also make a strong case that most other ministries have no such restriction for accredited journalists.

What slowdown?

While India Inc routinely emphasises the need for austerity, the extravagance and pomp on display during industry events present a stark contrast. At a recent exhibition and conference organised by an infrastructure firm in Noida, there was a special programme even before the formal launch event. There was a digital launch when tablets were handed out to ministers. A special mobile app replaced the ribbon-cutting ceremony. Gigantic screens across the hall were lit up, displaying what many thought were "needless graphics" accompanied by dancers wearing body-lights. The drama lasted for a full 10 minutes, during which the crowd wondered if there was indeed a slowdown. Not to mention, all this razzmatazz caused delays and chaos for visitors.

INSIGHT

Defining moment for India's coal

India must find its own sources of funding

JYOTI MUKUL

The year 2020 opened with two sets of announcements on coal, the world's most widely used energy fuel that has a 38 per cent share in global electricity generation. On January 8, the union Cabinet cleared an Ordinance to introduce commercial coal mining in the country. A few days later, the new law that delinks coal mining rights from captive usage and puts traders and users on a par when it comes to allocation of coal mines, was notified. But within a week, at the other end of the world, in New York, BlackRock, the world's largest asset manager, turned its back on investment in coal.

The two totally unrelated events that, ironically, have black rock or coal as a common thread will define the way India's coal sector moves. The question is, how does one investor's decision to not support coal projects impact a large market like India, especially since the two biggest companies in businesses related to coal, Coal India and NTPC Ltd, are government-promoted and have good internal resource-generation capabilities.

It is important to note here that commercial coal mining dreams of any player, whether Indian or foreign, will be dependent on their ability to raise funds and any debt or equity provider pulling out of the coal business could impact this exercise. Besides, a global fund squeeze at a time when domestic banking institutions have either reached their sectoral lending limits or find their power portfolios stressed out, would mean that even customers in the coal value chain will find the going tough.

BlackRock is not the only financier pushing for a no-coal future. Some years back, International Finance Corporation had announced it won't make any investment in coal though it did not pull out of existing investment.

BlackRock is not the only financier pushing for a no-coal future. Some years back, International Finance Corporation had announced it won't make any investment in coal though it did not pull out of existing investment. There is an overwhelming built-up of sentiment across the globe against financing of coal projects and when a brand like BlackRock moves away, others are bound to follow soon. Already, global managers with over $11 trillion of assets under management have decided to exit fossil fuel investments. These comprise 116 banks and insurers across the globe, according to data compiled by the Institute for Energy Economics and Financial Analysis (IEEFA), an anti-coal environment lobby group.

Despite this, the Indian coal market, especially in the power sector, is not changing drastically in the near term. Unlike Britain, Germany and France, which have laid out a clear road map for phasing out of coal-based power generation, India has no such plans. Part of the reason is that 70 per cent of its power is still generated from coal.

According to BP's Energy Outlook, almost all of the growth in power demand comes from developing economies, led by China and India. And, therefore, it is important to note that India's energy ecosystem that feeds on cheap power supply and low dependence on fuel import for electricity can hardly change in the near term.

Besides, the government has on its shoulder the responsibility of feeding power into the homes of 26.5 million new customers. The fact that these customers are at the lowest end of affordability and their aspiration of better and more hours of power supply cannot be left to renewables alone but will need continued support from coal is one reason that makes transition to green energy difficult.

All that India committed in Paris as part of its climate change goals is to push for renewable-based power generation but without any timeline for moving completely out of coal. It was only incidental that power generation from coal based thermal power plants in India fell by 3 per cent to 718.5 billion kwh in April-December 2019 over the previous year. Short supply of coal, especially in privately run generation units, was the reason for this fall and not that distribution companies switched off coal power to make way for renewable electricity. Good rains helped in higher hydropower generation with hydro and nuclear sources recording 18 per cent increase in generation during January-December 2019.

Nonetheless, there is a comforting factor for India in its green power story. The share of renewables in global power generation last year, if hydropower is excluded, increased from 8.4 per cent to 9.3 per cent which means that a 10 per cent contribution by renewable power in India is on a par with the global average and now, whatever, the country does in terms of adding gigawatts in green power, would only be better than the globalaverage.

In such a scenario, pushing for commercial mining of coal may look odd and not in sync with India's nationally determined contributions (NDC), but, nonetheless, it will be a good move towards greater transparency in the use of the resource. In that sense it is a move towards a mature coal market. But with global sources of funding closing, all this would be achievable only if India succeeds in finding its own sources of funding coal.

LETTERS

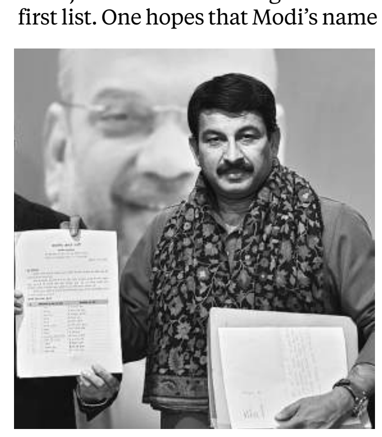
Saving vote bank

Union minister Piyush Goyal (pictured) seems to have jumped the gun in his laconic observations on the recent Amazon investment proposal. We may recall that Amazon had promised to create more than 25,000 jobs at a new campus in Long Island City, New York, in return for nearly $3 billion in government incentives. It was a cocky and raw business approach in a nation that is a votary of pure capitalism. Yet, it failed in this venture mostly due to the growing influence of the progressive Left in New York. In its current home in Seattle, Amazon is being criticised on rising house prices and growing inequality that has damaged the city. Now a minister in our own government has chosen to cast a barb on its predatory pricing policies. This might well be due to the party's concerns about saving its trader vote bank. But the remarks, credible as they may be, could have come from a party functionary rather than a minister for commerce and trade. The BJP is known to put its electoral concerns ahead of economy and this is no different.

R Narayanan Navi Mumbai

Modi's magic

This refers to "BJP releases first list of 57 candidates for Delhi polls" (January 18). Since the Bharatiya Janata Party (BJP) President and Union Home Minister Amit Shah has said that the party would not project any name as chief ministerial candidate but would fight elections under Prime Minister Narendra Modi's leadership, it is surprising that Modiji's name does not figure in the first list. One hopes that Modi's name



finds a place in second list so that his name and face get the party votes in the Assembly polls.

N Nagarajan Secunderabad

Give more autonomy

Indian public universities are far behind than those in the West when it comes to selection, recruitment, encouragement and retention of faculty members. Rigid rules, tight government controls, narrow minded and unaware selection committees are some of the main rea-

sons for this. Moreover, these committees don't value others' time. To process even simple applications, they take months. On the contrary, in the West, the rules are very liberal and relaxed. One will find professors having degree in economics teaching in the political science department and vice-versa; similarly, those holding degrees in physics or chemistry teach in electronic/computer engineering departments. Professors guide students in relaxed, tension-free atmosphere. It is time that Association of Indian Universities and University Grants Commission give full autonomy to our public universities and colleges in faculty selection.

Sunil Pedgaonkar Maharashtra

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The wrong approach

Govt attitude to e-commerce is harsh

Union Minister for Commerce and Industry Piyush Goyal has been forced to clarify certain remarks he made at the end of last week at the Raisina Dialogue in New Delhi. Mr Goyal had said there, in the context of Amazon Chief Executive Officer Jeff Bezos' visit to India, that the online retailer was not doing India any favour by investing a further $1 billion. Mr Goyal's point was that, if Amazon was making a billion-dollar loss every year, a cash infusion of a further billion dollars was no particular privilege for India. The minister subsequently clarified his point, saying that anyone was welcome to invest in India as long as they followed all domestic rules and regulations.

The minister is of course entitled to his own views on Amazon but nevertheless what they reveal on the subject of the investment climate and indeed the government's view of business in general are disquieting. The fact is that at the moment not many foreign companies are willing to take a bet on India, so if Amazon has decided to stay invested through another major cash infusion, that is not something to be contemptuous of. Worse, perhaps, is the notion expressed that making losses is somehow something for the government to be wary of and that it implies possible rule-breaking or predatory pricing. Many sectors — such as the state-controlled banking sector — are prone to making losses, but does this mean predation or rule-breaking? This fallacious notion has been repeated in various ways by the ruling establishment lately, and Mr Goyal's own statement came on the back of news that the Competition Commission of India (CCI) was going to investigate some selling practices of online marketplaces including Amazon and Walmart-controlled Flipkart. The CCI says that deep discounts on the platforms might be anti-competitive.

Such claims betray a lack of understanding of predatory pricing in economics. As the Federal Trade Commission, in the United States, points out, "consumers are harmed only if below-cost pricing allows a dominant competitor to knock its rivals out of the market and then raise prices to above-market levels for a substantial time ... Pricing below your own costs is also not a violation of the law unless it is part of a strategy to eliminate competitors, and when that strategy has a dangerous probability of creating a monopoly for the discounting firm so that it can raise prices far into the future and recoup its losses". But India is very far indeed from any such situation. Not only is there competition in the e-commerce space, but as a percentage of total retail, e-commerce remains very low in India. According to the World Bank, online commerce itself is only 1.6 per cent of retail sales in India — well below, say, the 15 per cent in China. In other words, deep discounts as a method of growing the market cannot be claimed at this point to be anti-consumer. Indeed, the infusion of cash into the Indian market is a net bonus for the country, given that it creates logistics infrastructure and jobs, as well as opening up new avenues for consumer welfare. The government should rethink how it approaches e-commerce — the hostile environment it is creating for e-commerce platforms hurts its foreign relations and the domestic economy.

The final call

Save telecom from becoming a duopoly

After the Supreme Court rejected the review petition filed by telecom companies against its order on licence fee dues linked to the adjusted gross revenues (AGR), all eyes are now on the government's next move. While some 15 telcos — many of which have shut shop or sold their businesses — have to cough up ₹1.47 trillion, including penalties and interest, the Department of Telecommunications (DoT) has the option of pro-actively seeking the top court's permission to allow the industry to stagger the payment of AGR dues. In the absence of relief from the government or judiciary, staggered payment is the only option left to save the telecom industry, which is facing severe financial stress.

It is a fact that the full payment of ₹1.47 trillion will go a long way in meeting the government's revenue shortfall in the current fiscal year. Additionally, if the AGR dues of more than ₹3 trillion slapped on non-telecom companies are realised by January 24, the proceeds will mean a massive windfall for a government, which is struggling to plug widening fiscal gaps. But, in this case, the government should refrain from the idea of revenue maximisation and focus on easing the pains of what has been a showcase sector for the country.

At this point, the DoT or any other government arm should not look at the staggered payment option as a sop for the telecom industry, but as a possible chance of saving the sector. It should also consider the long-term consequences of its action. At least one operator, Vodafone Idea, is likely to go down if forced to make the total payment of over ₹50,000 crore by the end of this week. That will mean an end of the India journey for a top foreign telecom company that brought in one of the largest foreign direct investments in the country more than a decade ago. Since the sector is not under pressure purely because of competition, the collapse of a large firm in this manner will deter potential investors. It will also affect the banking system and increase the cost for the government.

Another leading telco, Bharti Airtel, which has to pay more than ₹35,000 crore as AGR dues, may manage to meet the deadline, if forced to, with the help of its latest fund raising. But that would indeed have an adverse impact on its investment capabilities, the first casualty being its participation in the 5G spectrum auction. Already pushed to a corner because of excessively high spectrum prices in the past and aggressive competition in offering rock-bottom tariffs, following the entry of disruptor Reliance Jio, the telecom industry will not just be left as a duopoly but as a much weaker version of what it has stood for.

The government, which has been fighting the case with telcos for more than 14 years across several platforms, won when the Supreme Court in October last year upheld the DoT definition of AGR for calculating the pending licensing fees and spectrum usage charges. However, the DoT, besides looking at the state of the telecom industry, should consider its long-term revenue goals. The point is if the telcos survive, their revenues will be shared with the government, as is the practice. Why kill the golden goose?

ILLUSTRATION BY AJAYA KUMAR MOHANTY

Socio-political stability and growth

Growth prospects are threatened by citizenship proposals, which are leading to Centre-state confrontation, social strife, and disruption of working people's lives

When Finance Minister Nirmala Sitharaman presented her first Budget in July last year, this columnist, like many others, had listed a litany of economic woes including the sharp decline in the growth rate of GDP, fiscal pressures, twin balance-sheet problems, the woes of non-banking financial companies, the slow pace of job creation, distress in small enterprises and farms, trade battles, and the slowdown in global growth drivers. Nothing has changed and some of these problems have become even more troublesome. The government is now more willing to admit to the existence of these difficulties and the prime minister seems to have taken direct charge of the Budget. Since the government depends more on *natyashastra* than *arthashastra* to guide its economic policy, we can expect dramatic and unexpected measures to boost growth. But is this what we need right now?

NITIN DESAI

The foundation for long-term growth rests on the confidence that investors have in the stability of the social and political environment within which they have to function. This is particularly true for foreign investors. In this area there is a major change since July last year. The political and social climate in the country has become worse because of the drive to implement the Citizenship Amendment Act (CAA) and related measures like the National Population Register (NPR) and the National Register of Citizens (NRC), which, despite the ruling party's efforts at explanation, continue to arouse fear and suspicion.

The case against the citizenship-related proposals does not rest on their economic impact but their challenge to the idea of a secular India embodied in the Constitution, which, over the past 70 years, has become part of many people's image of themselves. It is no accident that it is young people, reciting the preamble to the Constitution, who are leading this revolt against sectarianism.

The charge of sectarianism and discrimination has been extensively debated. One way of seeing this is to recognise that the CAA will apply to the so-called illegal migrants who have been here from before 2014. *The CAA is essentially an amnesty*. Many countries with undocumented migrants who cannot be repatriated have resorted to an amnesty, like the 1986 amnesty in the US under the Reagan administration. However, the amnesty offered by the CAA is clearly discriminatory because it leaves out anyone who is a Muslim. How the Supreme Court will judge the matter cannot be predicted. But one can understand why so many people see the proposals as a violation of the fundamental right to equality.

The move has led to an atmosphere of confrontation between the Centre and many states, compromising the possibilities of cooperative federalism, essential for a high-growth path. We have had a first indication of this in the move away from decision making by consensus to voting in the GST Council. If the climate of Centre-state confrontation worsens, we may see this departure from cooperative federalism in other areas of economic policy. This will affect investment decisions and economic growth.

The government's citizenship proposals have also led to widespread protests led by students. The somewhat one-sided reaction to these protests by the authorities and the tolerance of violent counter-attacks by those who support the proposals will spill over into street confrontations and violence. This will exacerbate a sense of civil disorder and frighten investors, particularly in the northern states, where millions of new jobs are needed.

A move to implement the proposals will lead to extensive disruption at the ground level and a consequent economic impact if we go by the experience of the implementation of the NRC in Assam after 2005. This effort, which covered just 3 per cent of the country's population, took almost a decade, required the involvement of over 50,000 government employees, and cost more than ₹1,200 crore.

The government has now said that it does not intend to implement the NRC at the national level, though this is part of the ruling party's election manifesto and has been asserted forcefully several times by its leaders. Nevertheless, the fear is that the NRIC and NPR are meant to serve a similar function and will have an impact similar to the NRC implementation in Assam.

The big problem is the impact on poor people, who may not have the required documents and whose lives will be disrupted by the process of proving their right to Indian nationality. The Rights & Risks Analysis Group (RRAG) conducted a small survey of those excluded from the NRC in Assam to find out the amount spent by each excluded person.

The 62 respondents who were able to quantify their expenditure incurred for attending hearings before the NRC authorities claimed to have spent an average of about ₹19,065 to attend NRC hearings. That is about 15 per cent of our average per capita income and a much larger proportion of the income of the poor.

According to the survey, many of them had to "mortgage agricultural lands, sell their cattle/livestock, and agricultural products like betel nuts/paddy/betel nut gardens/jackfruit garden, sell their only means of income like auto rickshaw, while many took loans to meet the expenses for the NRC hearings". Apart from this, here was the logistical challenge of travelling for hearings before the NRC Seva Kendra five to ten times in far-off places. The survey did not include those who had to defend themselves before the foreigners' tribunals, which required representation by lawyers and cost ₹1-1.5 lakh.

Poverty in Assam declined rapidly from 52 per cent to 34 per cent between 1994 and 2005, but since then, while the NRC exercise was under way, the state has lagged behind with the poverty level in 2012 being just 2 per cent lower than in 2005 while most other states showed declines of 10 per cent or more. The national economy was in a boom period at this time. So could this poor economic performance be because of the disruption brought about by the NRC process in Assam?

The government must make up its mind on whether development is its priority or not. High growth and a $5-trillion economy in five years look quite difficult now. But if it insists on moving ahead with its citizenship proposals, it will lead to so much Centre-state confrontation, social strife, and disruption of poor people's lives that it might as well abandon its development goals. The ruling party must accept that the idea of India as a secular and liberal democracy has matured over the past 70 years and is too deeply embedded in the self-image of many of its citizens and in the international image of India to be abandoned without cost.

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Is regulatory friction really unintended?

For seven years, like a broken record, I have been arguing that India can be on the path of super growth but for endless red tape creating friction for enterprises — the actual job creators. These days, job creators even have taunts and insults hurled at them by politicians. Businessmen usually take this lying down. However, it does seem that the serial economic follies of the past six years, combined with a punitive "governance", is finally driving home a new realisation among people.

India's growth will remain subdued for a very long time. While the economy will bounce back on a relative basis, there is no escape from the past. Businessmen are now at the end of their patience and waiting for a change. So, we saw two top businessmen complaining last week about overregulation, a rather mild descriptor for the toxic alchemy of extortion, rent-seeking, and pure procedural harassment that the state delights in creating for enterprises.

IRRATIONAL CHOICE

DEBASHIS BASU

Rajiv Bajaj, who has been claiming there is no slowdown so far, and even rebuked other businessmen for not being innovative enough, is suddenly singing a different tune. "It is overregulation that is killing the industry," he alleges. Tata Sons Chairman N Chandrasekaran says, "India is fraught with micromanagement and suspicion." If India needs to grow faster, we need to remove the obstacles that impede businesses, he says.

Since 2014, most Indian businessmen believed that a committed, nationalist government had been hard at work in building a new India. Prime Minister Narendra Modi was expected to replicate his much-publicised success in Gujarat across the country. He won in 2014 on the promise of development. As far as I remember, for the first time, a national politician talked of removing red tape in election speeches as Mr Modi did. When he asked the cheering youth "*Apko naukri chahiye ki nahin chahiye?*" (Do you want jobs or don't you?), one naturally expected him to give enterprises freedom from mindless red tape. After all who creates job? From the corner grocery stores to mighty software companies, it is businesses, not the government, that do so.

Unfortunately, the real agenda of the government became clear in 2014 itself, even as businessmen, financial sector experts, and most of media continued to live under a mass delusion. The Modi government went about putting a computer chip on the myriad schemes of the Congress government — because everything was now digital — and peddled them as brilliant new ideas with new names. Every legislative change and policy only added to coercion, intrusion, suspicion, criminalisation, and punishments with jail terms even for small errors and omissions. In a corrupt country, these become tools for private as well as state extortion. Meanwhile, the social and political agenda (cow protection, lynching, nationalism, Pakistan, Kashmir, the flaws of the Gandhi-Nehru dynasty) completely overshadowed economic debate.

One of the business segments hit badly is the 150-cc class of two-wheelers, a mass-market vehicle. The first blow it received was a Supreme Court order making it mandatory to buy a five-year insurance policy upfront. This added several thousand rupees in insurance cost to the vehicle price. In April last year, new safety norms imposed another ₹8,000-10,000. As Mr Bajaj puts it, in just one year, there was a 20 per cent hike in costs, i.e. ₹15,000 on a motorcycle that costs ₹70,000, while the manufacturer takes a price increase of only 2-4 per cent every year. "I say this is overregulation. In a country where you struggle to drive at more than 20-30 km per hour, given the state of the roads, to impose an ₹8,000-10,000 cost for safety measure like ABS is completely over the top," said Mr Bajaj.

He went on to add, "It may be a politically incorrect thing to say that BS-VI is not the right thing to do but getting rid of old vehicles through a suitable mechanism would have been much more effective than squeezing out the last little bit of emission from BS-IV vehicles. Instead we are going for BS-VI from April and this will mean another ₹8,000-10,000 increase in the cost of vehicles of the common man. That means in a one-and-a-half-year period, prices of the common man's two-wheelers will go up by 30 per cent. To me this is a tangible hard issue on the ground. Does the government have the humility to reflect and roll back some of these?"

Mr Bajaj should know that humility is not a feature of any state, irrespective of its political colour. And, this government is one that has offered no apology for Aadhaar deaths, was remorseless about the demonic impact of demonetisation, and has inserted insane provisions of arrests and jail terms into various revenues laws.

The politics

It is good to see businessmen speak up about issues that hurt them instead of being politically correct. But that leaves unanswered the question: Why would the state be irrationally punitive? By what insane logic should politicians attack job-creators, and, why do we have laws that treat everyone as criminals rather than focus on enforcement and justice that catch the crooks? I am afraid, the Bajajs and the Chandrashekarans of the world are again missing the point by appealing to netas and babus to reduce red tape.

Just ask yourself: Why wouldn't ministers and their bright IAS secretaries know the cost of delay in decision-making, innumerable rules, multiple licences, retrospective amendments, long pending court cases, irrational tax demands, and punitive laws? I cannot believe they don't. It is intentional — to give them the upper hand and keep businessmen in their place. They don't want to simplify things or give freedom. The smartest of businesspeople, begging for simplification in all earnestness, are simply naïve. They do not get the politics behind this intentional overregulation.

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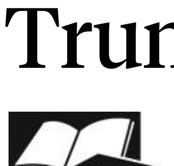
Trump, 'stable genius'



BOOK REVIEW

DWIGHT GARNER

The essence of irony, Henry Fowler wrote in *A Dictionary of Modern English Usage*, is that it "postulates a double audience" — one that's in on the joke, and another that isn't. The title of Philip Rucker and Carol Leonnig's new book, *A Very Stable Genius*, is thus savvy marketing. It's possible to imagine both Donald J. Trump's detractors and his admirers eagerly grasping a copy.

The admirers will not make it past the table of contents. Among the chapter titles: "Unhinged," "Shocking the Conscience," "Paranoia and Pandemonium" and "Scare-a-Thon."

This verbiage makes Mr Rucker and Ms Leonnig's book sound like one more enraged polemic. It isn't. They're meticulous journalists, and this taut and terrifying book is among the most closely observed accounts of Donald J. Trump's shambolic tenure in office to date.

Mr Rucker is *The Washington Post's* White House bureau chief; Ms Leonnig is a national investigative reporter for the newspaper. Both have won Pulitzer Prizes. Their newspaper's ominous, love-it-or-hate-it motto is "Democracy Dies in Darkness." *A Very Stable Genius* flicks the lights on from its first pages.

The result is a chronological account of the past three years in Washington, based on interviews with more than 200 sources.

It reads like a horror story, an almost comic immorality tale. The result is a book that runs low to the ground; it only rarely pauses for sweeping, drone-level vistas and injections of historical perspective. They do break news, some large and some small.

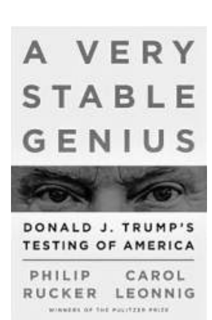
An example of large news: They report that in the spring of 2017, Trump implored Rex Tillerson, then secretary of state, to help him jettison the Foreign Corrupt Practices Act. "It's just so unfair that American companies aren't allowed to pay bribes to get business overseas," Trump whines to a group of aides.

Mr Rucker and Ms Leonnig are adept at scene-setting, at subtly thickening the historical record. More than a few of these scenes feature Ivanka Trump and Jared Kushner, known to nearly all in the White House as "the kids." They're viewed as in over their heads and possessed of unfailingly defective judgment.

There's a brutal scene early on, during the initial staffing of Trump's White House, concerning Michael Flynn, the president's first national security adviser. Despite warnings about Mr Flynn — the authors describe his "Islamophobic rhetoric, coziness with Russia and other foreign adversaries and a reliance on flimsy facts and dubious assertions" — Mr Trump's team made it clear he could have any job he wanted in the administration.

The authors write: "'Oh, General Flynn, how loyal you've been to my father,' Ivanka said in her distinctive breathy voice, adding something to the effect of 'What do you want to do?'"

Before Mr Trump had met with NATO allies, he kept glancing at Reince Priebus and pleading in front of others, in fanboy tones, "When can I meet with Putin? Can I meet with him before the inaugural ceremony?"



A VERY STABLE GENIUS: Donald J Trump's Testing of America
Author: Philip Rucker and Carol Leonnig
Publisher: Penguin
Price: $30
Pages: 465

The authors build several stirring scenes around Mr Tillerson's experiences as secretary of state, and the disturbing behaviour he witnessed. They provide the fullest picture to date of a now notorious July 2017 meeting in "the Tank" of the Pentagon during which military leaders and Mr Trump's national security team, alarmed by "gaping holes in the president's knowledge of history and the alliances forged in the wake of World War II," tried to give him a gentle lesson on American power.

The meeting ended after Trump exploded, saying, among other things, "You're all losers, you don't know how to win anymore," and "You're a bunch of dopes and babies."

At a later meeting in the White House Situation Room, Mr Trump began speaking, not for the first time, about his desire to make a profit from the deployment of American soldiers. Mr Tillerson had finally had enough. The authors describe the moment. The secretary of state stood, facing away from the president and toward officers and aides in the room.

"I've never put on a uniform, but I know this," the authors quote Mr Tillerson saying. "Every person who has put on a uniform, the people in this room, they don't do it to make a buck. They did it for their country, to protect us. I want everyone to be clear about how much we as a country value their service."

Mr Trump grew red in the face, but saved his fire for later. The chairman of the Joint Chiefs of Staff later called Mr Tillerson, his voice unsteady with emotion, to thank him. There aren't a lot of moments in *A Very Stable Genius* in which people do the right instead of the expedient thing.

There's a lot more here, amid the peeling wallpaper of the American experiment. Mr Trump considered awarding himself the Medal of Freedom. He informed the Indian Prime Minister Narendra Modi, wrongly: "It's not like you've got China on your border."

In his memoir *A Good Life: Newspapering and Other Adventures*, the *Washington Post* editor Ben Bradlee wrote that Richard Nixon's press secretary, Ron Ziegler, was "a small-bore man, over his head, and riding a bad horse."

These words apply, one thinks while reading this more than competent book, to nearly every adviser and staffer now in Trump's orbit. The authors write: "The ineptitude came from the very top."