Risks to growth

Given the recent policy changes, the CEA has done right to flag mid-year concerns

Five months after the Economic Survey 2016-17 was released, Chief Economic Adviser Arvind Subramanian has presented the second volume of the annual economic review-cum-prognosticatory report. With the intervening period having provided a wealth of data points and policy developments, including the momentous roll-out of the Goods and Services Tax, there was a clear need to update and refresh outcomes and forecasts. And his outlook for growth in the current financial year has clearly turned more sombre. While Volume I had projected the gross domestic product expansion in 2017-18 in a range of 6.75-7.5%, the CEA has had to take cognisance of several new factors that have contributed to his diagnosis: "that the balance of risks seem to have shifted to the downside" with a far lower likelihood of growth being "closer to the upper end". A quick look at each of the risks that Mr. Subramanian has cited shows it is going to be hard to find a 'magic bullet' fix that encompasses most of the concerns. For instance, the continuing appreciation of the rupee's real exchange rate means exporters are increasingly going to find themselves struggling to compete on pricing against competitors from countries whose currencies have weakened against the dollar and the euro. And this even while the recovery in global trade demand is still to acquire more robust momentum. Another dampener, according to the CEA, would be the increasing stress to balance sheets that companies in the power and telecom sectors have to contend with, and the deflationary bias to activity that such stress would impart.

Besides its long-term structural benefits, the implementation of the GST, says Mr. Subramanian, would also straightaway provide a short-term impetus by easing a cross-country logistics constraint following the removal of checkposts. And yet, the transitional challenges from the actual operation of the new indirect tax regime could feed into the mix of factors retarding momentum. Pointing to other factors including the farm loan waivers and agricultural stress that pose risks to the growth outlook, the survey posits that as part of the government's remedial responses "policy must be driven by the recognition that, over longer horizons, there is no necessary opposition between farmer and consumer interests." Backed by procurement, remunerative and stable support prices can help ensure that the risk of wild swings in the production and prices of farm produce is obviated, thus protecting both farmers and consumers. The CEA makes bold to recommend that the "time is also ripe to consider whether direct support to farmers can be a more effective way to boost farm incomes." Ultimately, he argues, quick and considerable monetary easing by the RBI – with policy rates cut to about 4.25-5.25% from the current 6% – could help the economy approach full potential and aid in resolving the issue of stressed balance sheets.

Slow injustice

Speedy trials alone can undo the sense of injustice caused by acquittal after years in jail

The wholesale acquittal of all 10 persons arrested in connection with a blast at the Police Task Force office at Begumpet in Hyderabad in 2005 must occasion serious introspection on the prevailing gulf between crime and justice. While they no doubt bring relief, acquittals in such cases also carry a sense of injustice, especially when they are based on absence of evidence and not merely because there is some doubt about culpability. It may also seem unfair to those who feel the accused got away; but more often, the injustice flows from the loss suffered by the accused who might have spent years in prison, possibly in the prime of youth. There have been quite a few instances, in recent times, of those arrested for alleged involvement in terrorism incidents being released after years in prison. Examples include Nisar-ud-din Ahmad, who spent 23 years in prison in connection with several train blasts, before the Supreme Court ordered his release last year. Aligarh Muslim University research scholar Gulzar Mohammed Wani spent 16 years in jail on suspicion of being a member of the Hizbul Mujahideen before he was acquitted due to lack of evidence. Exoneration from one or two charges cannot be adequate recompense for the loss of liberty and the trauma of the trial. A key aspect of these cases is that they were serious crimes warranting credible investigation and vigorous prosecution. The outcome, often acquittal for want of evidence, reflects poorly on the investigating machinery as well as the judicial system. In December 2016, the National Investigation Agency managed to get Yasin Bhatkal, founder of the Indian Mujahideen, and four others convicted and sentenced to death in connection with the 2013 twin blasts in Hyderabad, but it is a rare instance of a successful prosecution and a relatively quick trial.

Fairness in the administration of criminal justice is not secured by the final outcome alone, but must be built into the process of determining whether a person is guilty or not. Courts tend to deny bail in cases related to terrorism, but do not show a matching commitment to an expeditious trial. Delayed trials weaken the prosecution's case. Witnesses tend to forget crucial details or lack the resolve to depose carefully. Every person acquitted may not be innocent; equally, it cannot be said that people are going scot-free after committing grave offences. Individuals come under suspicion for their links with organisations or groups, but are exonerated by courts after the prosecution fails to link them to any particular crime. One way of addressing the problem of prolonged incarceration and perfunctory prosecution is to make it a matter of policy to have a quick and time-bound trial at least in serious cases involving acts of terrorism and those under special laws. Justice, if it has to be substantive, cannot be in slow motion.

In South Asia, be the Un-China

India needs to rekindle the SAARC process in order to secure historical affinity with its neighbours

SUHASINI HAIDAR

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As the stand-off between the Indian and Chinese militaries enters its third month at Doklam, it is not just Bhutan that is keenly anticipating the potential fallout. The entire neighbourhood is watching. There is obvious interest in how the situation plays out and the consequent change in the balance of power between India and China in South Asia. India's other neighbours are likely to take away their own lessons about dealing with their respective "tri-junctions" both real and imagined, on land and in the sea. A Chinese defence official was hoping to press that nerve with India's neighbours when he told a visiting delegation of Indian journalists this week that China could well "enter Kalapani" – an area near Pithoragarh in Uttarakhand that lies along an undefined India-Nepal boundary and a tri-junction with China – or "even Kashmir" with a notional India-China-Pakistan trijunction.

Buzzword is equidistance

Perhaps, it is for this reason that governments in the region have refused to show their hand in the Doklam conflict. "Nepal will not get dragged into this or that side in the border dispute," Nepal's Deputy Prime Minister Krishna Bahadur Mahara said ahead of a meeting with External Affairs Minister Sushma Swaraj, who had travelled to Kathmandu for the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) regional summit. Chinese Vice Premier Wang Yang will be in Kathmandu next week, and Nepal's Prime Minister Sher Bahadur Deuba in Delhi the week after. Making a similar point while speaking at a conference on public relations this week, a Sri Lankan Minister in Colombo contended that India and China are "both important" to Sri Lanka. Bhutan's Foreign Ministry has stuck to its line, blaming China for violating agreements at Doklam, but not mentioning India. Columnists in the country too are increasingly advocating that Bhutan distance itself from both Indian and Chinese positions.

A policy of 'equidistance' for our closest neighbours is a far cry from India's past primacy in the region and something South Block can hardly be sanguine about. Yet, it is a slow path each of the neighbours (minus Bhutan) has taken in the past few years. When the Maldives first turfed private infrastructure group GMR out of its contract to develop Male airport in 2012, few could have imagined the situation today with Chinese companies having bagged contracts to most infrastructure projects. This includes development of a key new island and its link to the capital Male and a 50-year lease to another island for a tourism project.

Similarly, when the then Prime Minister of Nepal K.P. Sharma Oli signed a transit trade treaty and agreement on infrastructure linkages with China in late 2015-2016, Ministry of External Affairs mandarins had brushed it off as a "bluff". Today, China is building a railway to Nepal, opening up Lhasa-Kathmandu road links, and has approved a soft loan of over $200 million to construct an airport at Pokhara. According to the Investment Board Nepal, at a two-day investment summit in March this year, Chinese investors contributed $8.2 billion, more than 60% of the foreign direct investment commitments made by the seven countries present.

Sri Lanka's Hambantota port construction project went to the Chinese in 2007 only after India rejected it. Today, China doesn't just own 80% of the port; it has also won practically every infrastructure contract from Hambantota to Colombo. Chinese President Xi Jinping's visit to Bangladesh last October was another such overture, with $24 billion committed in infrastructure and energy projects. Earlier this year, the largely state-owned Chinese consortium, Himalaya Energy, won a bid for three gas fields in Bangladesh's north-east shoulder from the American company Chevron, which together account for more than half of the country's total gas output.

Even if Pakistan is not counted in this list, it is not hard to see which way India's immediate neighbours, which are each a part of China's Belt and Road Initiative (BRI), are headed in the next few years. More pointedly, once the investment flows in, it will be that much harder for them to stave off a more strategic presence which China is now more unabashed about.

If one of the aims of the action in Doklam is to save Bhutan from the same fate, then what else must India do to ensure that China doesn't succeed in creating similar space for itself in a country that stood by India in its objections to BRI, and bring its other neighbours back?

Rebooting SAARC

To begin with, India must regain its role as a prime mover of the South Asian Association for Regional Cooperation (SAARC), the organisation it abandoned a year ago over its problems with Pakistan. Despite sneers all around, SAARC has survived three decades in spite of its biggest challenge, India-Pakistan tensions. That New Delhi would cancel its attendance at the summit to be held in Pakistan in the wake of the Uri attack, winning support from other countries similarly affected by terrorism such as Bangladesh and Afghanistan, is understandable. But a year later, the fact that there have been no steps taken to restore the SAARC process is unfortunate. This will hurt the South Asian construct and further loosen the bonds that tie all the countries together, thereby making it easier for China to make inroads. It should be remembered that despite China's repeated requests, SAARC was one club it never gained admittance to. For all the Narendra Modi government's promotion of alternate groupings such as South Asia Subregional Economic Cooperation (SASEC), BIMSTEC, the Bangladesh, Bhutan, India, Nepal (BBIN) Initiative and Security and Growth for All in the Region (SAGAR), none will come close to SAARC's comprehensive cogency.

Second, India must recognise that picking sides in the politics of its neighbours makes little difference to China's success there. In Sri Lanka, the Sirisena government hasn't changed course when it comes to China, and despite its protestations that it was saddled with debt by the Rajapaksa regime, it has made no moves to clear that debt while signing up for more. The United Progressive Alliance government made a similar mistake when President Mohamed Nasheed was ousted in the Maldives, only to find that subsequent governments did little to veer away from Chinese influence.

India made its concerns about the then Prime Minister Oli very clear, and was even accused of helping Pushpa Kamal Dahal 'Prachanda' to replace him in 2016, yet Nepal's eager embrace of Chinese infrastructure and trade to develop its difficult terrain has not eased. In Bangladesh too, Prime Minister Sheikh Hasina, who has overseen the closest ties with New Delhi over the past decade, has also forged ahead on ties with China. Should her Awami League lose next year's election, the Bangladesh Nationalist Party will most certainly strengthen the shift towards China. In Bhutan's election, also next year, it is necessary that India picks no side, for nothing could be worse than if the Doklam stand-off becomes an India-versus-China China election issue.

A policy of respect

Above all, India must recognise that doing better with its neighbours is not about investing more or undue favours. It is about following a policy of mutual interests and of respect, which India is more culturally attuned to than its large rival is. Each of India's neighbours shares more than a geographical context with India. They share history, language, tradition and even cuisine. With the exception of Pakistan, none of them sees itself as a rival to India, or India as inimical to its sovereignty. As an Indian diplomat put it, when dealing with Beijing bilaterally, New Delhi must match China's aggression, and counter its moves with its own. When dealing with China in South Asia, however, India must do exactly the opposite, and not allow itself to be outpaced. In short, India must "be the Un-China".

suhasini.h@thehindu.co.in

No level playing field

The Insolvency and Bankruptcy Code has loopholes to close down businesses instead of assisting entrepreneurs

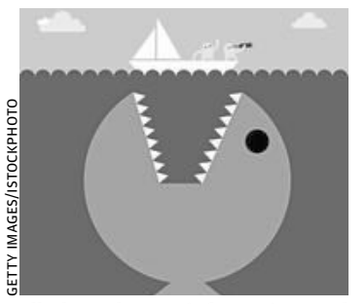
GODA RAGHAVAN

The Insolvency and Bankruptcy Code, 2016 was enacted with the intention of improving the ease of doing business in India, a country perceived to have a weak insolvency framework and where defaulting debtors abuse the law. At the outset, the Code appears to have the interests of business at heart: it aims to overhaul laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals; attempts to ease the process of recovery of money by operational and financial creditors in a timely manner; and places the onus on professionals to put forth resolution plans within 180 days. It seeks to ensure that there is neither scope for any further claims by the creditors, except through the Code's mechanisms, nor for the corporate debtor to challenge the claims made by the creditor.

In reality, however, the Code has enough loopholes to close down businesses instead of assisting entrepreneurs. As explained subsequently, it fails to provide adequate safeguards to protect the rights of the company before handing over the management in its entirety to the resolution professional. The entourage of appeals before the National Company Law Appellate Tribunal, and writ petitions before numerous High Courts, in a short span begs the question: Is the Code truly poised to meet the ends it proclaims?

A quick process

In relation to corporate persons, the Code looks to wrap up the game in 180 days. It warrants a notice of dispute to be issued followed by a response period of 10 days for the corporate debtor, failing which the creditor is entitled to file an insolvency application before the National Company Law Tribunal (NCLT). Within 14 days from filing, the application must be admitted. Upon admission, the moratorium period (freezing of bank accounts, prohibition on foreclosures in relation to financial debts, etc.) commences. At this stage, the existing management of the company loses complete control and all powers vest with an interim resolution professional, who has merely 30 days to put together



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all the relevant information and call for a meeting of the financial creditors.

Once the financial creditors meet, they must appoint a resolution professional who will put together an information memorandum of the company that forms the basis for a resolution applicant to propose a resolution plan for the company. The Code fails to define a resolution applicant. All such resolution plans are placed before the financial creditors. When at least 75% of the financial creditors approve, the plan is implemented by way of an order by the NCLT. If the financial creditors fail to arrive at a consensus, the default plan is to liquidate the company.

The flaws

The Code rides substantially on the unquestionable word of the creditors. Neither does the corporate debtor have an opportunity to put forth his/her case nor is there any scope of discretion provided to the adjudicating authority itself. At various stages – of admission of the insolvency proceedings, of appointing the insolvency professional, of finalising the resolution plan – the Code fails to provide any opportunity to the corporate debtor to make a representation, at the very least. In this manner, the Code ignores rights enshrined in the Constitution. (In *Maneka Gandhi v. Union of India*, 1978, the Supreme Court observed that it is the duty of the authority to give reasonable opportunity to be heard, even where there is no specific provision for showing cause when a proposed action affects the rights of the individual.)

The Code is also deficient in providing a yardstick for the qualification of the interim and of the final insolvency resolution professionals. It allows for any person to access the information memorandum put together by the insolvency professional without restricting competitors or imposing any confidentiality obligations. This allows for any person to access proprietary information of the corporate debtor and misuse the same, given that there is no law protecting confidentiality and vitiates the fundamental right to business under Article 19(1)(g).

It is also shocking that the Code prohibits withdrawal of the application once the same has been admitted. This means that there is no scope whatsoever for settlement. This is despite the recent ruling of the Supreme Court in *Lokhandwala Kataria Construction (P) Ltd. V. Nisus Finance and Investment Managers LLP* (2017), wherein a settlement proposal was taken on record and the appeal was disposed of. However, this cannot be held as a precedent.

Further, the unrestricted access of any person without mandatory contractual obligations in relation to confidentiality vitiates the fundamental right to business under Article 19(1)(g).

All this shows that the Code still requires a lot of hand-holding by the judiciary to put in place adequate safeguards and guidelines to ensure its smooth, effective, and fair enforcement. The Code may have teething troubles, such as infrastructure, but there is no excuse at all for basic constitutionality flaws.

Goda Raghavan is an advocate of the Karnataka and Madras High Courts and a company secretary. E-mail: goda@aklawchambers.com

LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

Remarks on minorities

The outgoing Vice-President Hamid Ansari's controversial remarks about the sense of insecurity among minorities are not in good taste ("Minorities are safer: Venkaiah", Aug. 11). Equally unpleasant and embarrassing is the rebuttal by Vice-President-elect M. Venkaiah Naidu, who branded it political propaganda. Indulgence in a war of words only betrays their political affiliations, which does not add to the dignity of those in high office and the post. This is a sad commentary on the extent to which politicisation has taken deep roots in all spheres including constitutional posts. With the Raj Bhavans already succumbing to political pulls and pressures, such a development hardly comes as a surprise. The need of the hour is real unity in political diversity.

P.K. VARADARAJAN,
Chennai

Slanted views

I am rather surprised to note that most letter writers here blame the BJP for the way the Rajya Sabha polls in Gujarat turned out, completely forgetting that it is the responsibility of the Congress to keep its flock together. I have been a reader of *The Hindu* for over 50 years, and continue to be one, and am disappointed that instead of being fair and neutral, a majority of articles, reports and letters are biased and against the BJP. Narendra Modi is the only leader who has a long-term vision and devotes most of his time to boost India's growth.

S. NATARAJAN,
Bengaluru

The Gujarat result

The decision of the Election Commission to invalidate the votes cast by the two rebel Congress MLAs in the Rajya Sabha election in Gujarat is not only a slap on the face of these defectors but also the avaricious and undemocratic BJP. It is unfortunate that a party which considers itself to be a part of a parent right-wing organisation – and a disciplined entity – should stoop to this level to grab power. In going by the rule book and standing steadfast in its decision despite political pressure, the Election Commission deserves accolades.

THARCIUS S. FERNANDO,
Chennai

The spirit of 1942

The Prime Minister's call to reignite the spirit of 1942 to eliminate illiteracy, poverty and unemployment is welcome. But has he forgotten the fact that the public sector has been acting as a major arm of Central and State governments in discharging these social obligations efficiently in remote parts of the country?
There are instances of public sector units being run to the ground because of political interferences and bureaucratic indifference. PSUs help in promoting the feeling of one nation as well as provide employment across the country overcoming cultural barriers. The Prime Minister should not ignore or eliminate the public sector concept if he really intends to translate his rhetoric into practice. All that he needs to do is to continue with the public sector. PSUs are ideally placed to foster the 'Make in India' concept.

S.S. DHARMARAJAN,
Coimbatore

Medical ethics

The tragic manner in which an immigrant worker passed away in Kerala after several hospitals are alleged to have denied him treatment shows how greedy and unscrupulous hospital managements are becoming. If this is the case, what is the use of concepts such as the importance of the 'golden hour' in the case of accident victims? The incident is a blot on the State and action should be taken against hospital managements for dereliction of service.
It is welcome that the Kerala Clinical Establishments (Registration and Regulation) Bill, 2017, presented in the Assembly on Thursday, makes a mention of treatment in emergencies besides the need for transparency. It is equally encouraging that Kerala Chief Minister Pinrayi Vijayan has taken note of what happened ("Pinarayi apologises to family of accident victim", August 11).

K.A. SOLAMAN,
Alappuzha, Kerala

■ The manner in which the accident victim died is shocking ("Turned away by 7 hospitals, victim dies", August 8).
This would not have happened if the man had been a VIP or one who could shell out the money required. What prevented these hospitals from at least providing him first aid?

VAISHALI JAYA,
Chennai

Class activity on China

Being a part of an educated and cultured society, it's disturbing to know that even an event organised within a school is politicised ("Bengaluru school cancels classroom event on China", August 11). Though India is in the midst of a stand-off with China, this shouldn't curb one's choice of learning or understanding about any country, even if it includes China.
If the protesters think that it is so-called nationalism that is being disrupted here, then I think it's high time we redefine nationalism.
Moreover, if eating Chinese food can make one pro-Chinese or anti-national, then I'm afraid I'm already one.

VARSHA MANOJ NAIR,
Bengaluru

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