BusinessLine
TUESDAY, NOVEMBER 19, 2019

## Politics of legislation

*Legislative business in Parliament has fallen prey to ad-hocism, resulting in loophole-riddled laws*

The Winter Session of Parliament has typically commenced with partisan agendas dictating the discourse. Anxious to bolster its image as efficient administrators guided by fixed ideological concerns, the Government has listed as many as 35 new legislation with the Citizenship (Amendment) Bill, 2019 being the crowning glory that would alter the definition of "illegal migrant" to facilitate entry of Hindus, Sikhs, Buddhists, etc., from Pakistan, Bangladesh and Afghanistan. The Opposition has simultaneously flagged the security situation in Jammu and Kashmir and demanded that veteran MP Farooq Abdullah, who has been in detention since August 5, 2019, when Article 370 was abrogated, be allowed to attend the Winter Session.

Such posturing and distrust introduces an element of delinquency in the primary function of crafting laws in Parliament. Take, for instance, a critical legislation such as the Insolvency and Bankruptcy Code (IBC) that came into existence after amending as many as 11 statutes and repealing two other Acts. The Government raced through the complex process of consolidation of laws relating to insolvency resolution of corporate firms, persons and individuals, ensuring its passage in December 2015 and due notification in January 2016. Within three years of its passage, the IBC has undergone four major amendments, two of them through the extraordinary measure of ordinances. Why, for instance, did the inclusion of Section 29A — preventing persons who have contributed to the default of the corporate debtor from gaining control in a Resolution Plan — have to come through an ordinance? The confusion that followed because of the wide ambit of ineligibility could easily have been avoided had Parliament given due consideration and been clear in the framing of the law in the first place. The short debate allowed in the Lok Sabha to pass the amendment brought in through the second ordinance in the Code to treat home-buyers on a par with financial creditors, witnessed an almost unanimous appeal from veteran parliamentarians to ensure clarity in the legislation. "The provisions of this Act had to be amended twice. Even today, it is not perfect. How many times more would this Act have to be amended?" asked former Union Minister M Veerappa Moily. Yet another amendment bill for inclusion of a chapter on Cross Border Insolvency has been listed in this session. Among the other 34 new legislation listed are amendment bills pertaining to Taxation Laws, Companies Act, Mines and Minerals (Development and Regulation) Act, fresh statutes to provide for establishment of International Financial Services Centres, enact a domestic anti-maritime-piracy legislation *et al*.

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If the Government really means business and, more importantly, wishes to facilitate ease of doing business, the treasury benches have to ensure that fresh legislation is not left dotted with such loopholes as to be subject to wide judicial interpretation or a spate of further amendments. Indeed, ad-hocism owing to petty partisan concerns should not cloud the very *raison d'etre* for Parliament which is to ensure the relevance, vitality and dynamism of law.

## OTHER VOICES

GLOBAL TIMES

### China and US try to iron out military differences

The face-to-face meeting between Chinese State Councilor and Defence Minister Wei Fenghe and US Secretary of Defence Mark Esper on Monday morning in Thai capital Bangkok was necessary now more than ever. As the trade war simmers, speculations about possible US missile deployment in Asia and the US intervention in Hong Kong have caused harm to the strategic trust between the world's two biggest powers; hence it was imperative for the military leaders of the two countries to meet. BEIJING, NOVEMBER 18

GULF NEWS

### Why economic sanctions don't deliver results

The nuclear deal with Iran initiated by US President Barack Obama, sealed after seven years of negotiations, was certainly flawed. It was the worst deal ever negotiated pronounced President Donald Trump who had a point because it served to embolden, enrich and legitimise the Iranian regime for very little in return. Its focus was solely on restricting Tehran's nuclear activities rather than its aggressive behaviours throughout the region. DUBAI, NOVEMBER 18

THE STRAITS TIMES

### Strong will can bring new walls down

Thirty years ago this month, the Berlin Wall fell, reuniting the two halves of Germany, sparking the detonation of communist regimes in eastern Europe and uncorking a surge of openness that raised hopes of peace and prosperity being borne to far corners of the world. The expansive trend has been markedly on the wane in recent years, cutting prematurely short the whole-of-world approach to resolving humanity's common concerns. New walls have emerged instead: cemented by the mortar of short-sighted protectionism and narrow-cast nationalism. SINGAPORE, NOVEMBER 18

# Mistakes made by Airtel, Vodafone

The telcos should have paid the disputed sum 'under protest' and avoided the crippling burden of punitive levies

D SAMPATH KUMAR

Ever since the Supreme Court rejected, late last month, the telecom companies' plea on licence fees and spectrum usage charges it was expected that not only would there be a heavy outgo for these companies but also there would be questions over their ability to continue to carry on business as before. Now there is complete clarity.

Both Bharti Airtel and Vodafone Idea have told the country's stock exchanges that there exists a significant risk to their ability to carry on with their mobile telephony business.

Bharti Airtel, for instance, told the country's stock exchanges that the verdict 'represents a material uncertainty whereby, it may be unable to realise its assets and discharge its liabilities in the normal course of business, and accordingly may cast significant doubt on the Group's ability to continue as a going concern company'.

Stripped of accounting jargon, the company is saying that if there is no financial relief forthcoming either from the government or from the community of investors or both, it may have to shut shop. The stock exchange filing of Vodafone Idea, makes a similar assessment.

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But the companies have only themselves to blame. They had ample time to secure themselves financially, from any adverse fallout of the court verdict. After all, the dispute between the telecom companies and the government had been a long-standing one, going all the way back to nearly a decade and a half when the licence-fee regime was changed from one of fixed annual payment to one based on a percentage of annual revenues of the operators. But they chose not to do anything in the matter on the facile assumption that the court's decision would go in their favour.

What is even more astonishing is that the quantum of money involved in the dispute was something that they could have easily handled on an ongoing basis, year after year. Even if they wanted to fight the case in the court it was always open for them to pay the disputed levies 'under protest' and recovered it back from the government, with even interest, once the court decides in their favour.

Take the case of Vodafone Idea. The actual difference in the amount that the company is now required to fork out by way of licence fees and spectrum usage charges over what it has already paid, comes to only ₹11,140 crore. But the interest, penalty for non-payment on due date and interest on such penalty resulted in the government's claim ballooning to ₹44,150 crore. In other words, finance cost and penalties account for an extra 300 per cent of basic dues by way licence fees and spectrum usage charges.

It is true that ₹11,140 crore is by no means a small sum. But against that must be set the fact that the claim actually represents dues to the government spread over nearly 15 years of telephony operations.

Also, when seen in relation to the gross annual revenues of the company, the disputed amount annually is not such as to impose a heavy burden on the operations of the company.

For the record, Vodafone Idea Cellular clocked ₹37,000 crore in gross annual revenues in financial year 2018-19 alone. Even more ironic is that the company had made a provision of ₹18,470 crore towards possible claims from the government. So the money was there within the company but it chose to litigate its way out of its financial claim and came a cropper.

**The telcos** erred in assuming the court's decision would go in their favour ISTOCK

Bharti Airtel was even better placed to handle the annual incremental demand from the government given its even superior financial capacity. The company owed ₹6,164 crore in disputed levies. But the interest, penalty and interest on such penalty pushed up the total claim by a further sum of ₹22,286 crore to take the final dues to ₹28,450 crore.

It is worth noting that Bharti Airtel's gross revenue in 2018-19 was even higher at roughly ₹50,000 crore and the accumulated basic levies by way of licence fees and spectrum usage charges that were in dispute, is just a fraction of that.

### Judicial route preferred

This is not say that the companies should not have put up a legal fight to assert their rights and instead should have meekly paid up whatever the government had demanded of them. Rather, the point here is that companies' interests would have been best served by paying the disputed sum 'under protest' and in the process saved themselves the crippling additional burden of punitive levies in the form of interest, penalty and interest on penalty.

It has become a deeply ingrained habit among managements that whenever there is a commercial dispute between a company and the government, litigation is the preferred approach. Since the justice delivery system in the country is extremely slow the temptation to use the legal mechanism to delay paying statutory dues is now part of the corporate DNA.

This almost invariably works in companies' favour. But this was one situation where a more cautious approach to dealing with the government's demand for higher licence fees would have been eminently more sensible. For two reasons. One, the dispute in this case was on the question of what constitutes 'revenue', a percentage of which was to paid to the government as licence fees and spectrum usage charges.

The telecom companies contended that it should conform to the generally accepted notions of 'revenue' in accounting theory and, additionally, it should be restricted to such revenues as are derived exclusively from offering a telephony services to their subscribers.

The government's contention was that there exists a contract between it and the telecom operators which spelt out the receipts that should go into an assessment of 'revenue' for purposes of levies due to the government.

The so-called accounting notions of distinction between 'capital' and 'revenue' are irrelevant for this purpose. Should one go by the accounting notions of 'revenue' or a notion of 'revenue' that is spelt out in a duly executed contract between parties (however absurd such a notion of revenue as spelt out, be) is the crux of the dispute.

One could argue that there is nothing here to suggest that the telecom operators' case is inherently so strong that the situation called for the adoption of the litigation route on the part of the telecom operators.

Surely would not the government's contention of a contractual commitment dictating the definition of 'revenue' be just as strong? If the telecom operators' was only a 50:50 proposition was there a case for legal approach to resolution, especially when the contract contained a toxic clause for punitive levies as in the instant case?

These companies wanted to opt out of a fixed licence fee regime in favour of a regime computed as a percentage of revenues earned. Now that choice has landed them in as serious a situation as the earlier one, if not worse. Oscar Wilde spoke of two tragedies in life. "Not getting what one wanted and then getting it". He might as well had Indian telecom companies in mind when he said it.

*The writer is a former Editor of BusinessLine*

# Give the domestic oilseeds sector a boost

Steps to raise oilseeds output through area expansion and improved productivity must be accompanied by import curbs

G CHANDRASHEKHAR

New Delhi is reported to be keen to ensure that the country's dependence on vegetable oil import is reduced and domestic production is given a boost. Why not? After all, we spend well over $10 billion a year (equivalent to over ₹70,000 crore) on import of 14-15 million tonnes of various oils, representing two-thirds of our annual consumption need.

The policymakers' apathy towards the oilseeds sector and blind adoption of an ultra-liberal import policy — by itself a facile option — over the last 20 years or so has resulted in an alarming level of dependence on imports, something that is self-defeating, burdensome and fraught with risks.

Unrestricted imports of edible oil — finished or semi-finished product — have hurt domestic producers of oilseeds, the growers. The domestic oilseed crushing and solvent extraction industry too is in the throes of a crisis. Government efforts to raise the minimum support price for oilseeds and effect changes from time to time in customs duty on imported oils have not had the desired impact at all.

If anything, oilseed growers are in distress. At the same time, tinkering with customs duty from time to time has failed to provide any relief to domestic producers but has merely enriched speculative interests that often bet on changes in rates of duty.

No wonder, the area under oilseeds has remained stagnant around 26 million hectares while production has got trapped around the 30 million tonnes mark. In its present state, the country's oilseeds sector will not be able to contribute to the avowed objective of doubling farmers' income in five years.

We need an approach that at once encourages domestic production while discouraging imports. Any effort to encourage domestic production will be substantially neutralised if we continue to follow the existing unrealistic import policy.

Raising domestic oilseeds production by ensuring area expansion and productivity enhancement is an obvious choice. Work on it has to start in right earnest. States have to

**Oilseed growers** are in distress

be taken on board. The structural challenges confronting oilseeds production have to be recognised and addressed. Crop rotation, improved agronomy, technology infusion and robust procurement have to be a critical part of the strategy.

This approach will have medium-to-long term impact on domestic production and productivity. So, in the short to medium term, the country will have to continue to import vegetable oils in order to meet the domestic supply shortfall and ensure consumers are able to access cooking oils at affordable rates.

This calls for a pragmatic trade and tariff policy that will at once advance the interests of consumers as well as protect the domestic oilseed farmers. A review of the extant import policy and tariff structure is absolutely necessary. There is a strong case to reduce the quantum of import by placing an annual ceiling on it. At present, 10-20 per cent of aggregate import is speculation driven and deserve to be curtailed.

As tariffs have failed to perform, imports have to be curtailed to, say, 12-13 million tonnes. Further, the imports have to be closely monitored by mandating a system of contract registration and tracking physical arrivals. The long credit period currently enjoyed by importers should be restricted to 30 days.

These steps will shake the oilseeds sector, especially the import trade, from out of its comfort zone. In other words, we need to disrupt the existing inertia; and it is indeed possible to have creative disruption that would benefit domestic producers and not compromise consumer interests.

Restricting import volumes will in the short run push domestic oilseed prices higher and provide the much-needed boost to growers with multiple benefits. It will result in area expansion for which grain mono-cropping States such as Punjab and Haryana can be targeted. Higher returns will mean farmers will be encouraged to spend more on inputs and practice improved agronomy, Infusion of multiple technologies — infotech, biotech, satellite tech, drone, and so on — will boost crop prospects.

The Commerce Minister should be complimented for his initiative to ensure zero-import of edible oil; but he must take the first step by restricting the volume of import and mandating close monitoring of the import trade. The Finance Ministry must be proactive in effecting changes in customs duty and not succumb to lobby pressure.

The Agriculture Ministry will of course have to come up with a national policy for boosting domestic production, not only of cultivated oilseeds but also exploiting the potential of non-conventional sources such as rice bran as well as tree-borne oilseeds. The sooner the government gets down to the task at hand the better.

*The author is a policy commentator and agribusiness specialist*

## LETTERS TO THE EDITOR

*Send your letters by email to bleditor@thehindu.co.in or by post to 'Letters to the Editor', The Hindu Business Line, Kasturi Buildings, 859-860, Anna Salai, Chennai 600002.*

### Sri Lankan politics

This refers to the editorial 'Political shift in Lanka' (November 18). The return of the Rajapaksas to power in Sri Lanka will have a myriad impact on the politics and economy of the country. If Mahinda Rajapaksa becomes the Prime Minister it will be difficult days ahead for Lankan Tamils and Muslims. It will be good if he and his brother, President Gotapaya Rajapaksa, stop their antagonistic attitude towards Tamils and concentrate on revival of the Lankan economy.

**NR Nagarajan**
Sivakasi

### Chinese interest in Lanka

The shift in political power in Sri Lanka is quite significant for India too, especially in the context of protecting the interests of the Tamil population there. Also, Sri Lanka's slant towards China, considering the latter's growing interest in the region, is a matter of some concern. From now on, India will need pay close attention to developments in the island nation.

**TR Anandan**
Coimbatore

### IBC regime

This refers to the recent move by the Centre to bring personal guarantors of corporate debtors under the IBC regime from December 1. This is great news for banks which are finding it difficult to recover the huge NPAs (non-performing assets) accumulated in their books. Even after filing an insolvency petition before the National Company Law Tribunal (NCLT) and after implementation of the bankruptcy code, banks are finding it difficult to recover their dues due to legal hurdles.

The latest news, along with the Supreme Court quashing the NCLAT order in the Essar Steel case and providing succour to struggling secured financial creditors, should bring cheer to the banking community. The only setback in the recovery process under IBC relates to the Supreme Court striking down the word mandatorily from the 330 days prescribed by the IBC. Nevertheless, the recent positive developments should drastically bring down the number of applications being filed by promoters and related parties to delay the recovery process.

**Srinivasan Velamur**
Chennai

### Maharashtra in disarray

This is with reference to the news report 'NCP, Shiv Sena, Cong iron out government formation strategy' (November 18). The politicians/leaders of Maharashtra, in their scramble for power, have thrown governance and welfare of the State to the winds. The State is facing problems like farm distress, unseasonal rains/floods and unemployment, to name a few. However instead of finding solutions to these problems, the leaders are fighting for power.

The various political parties should realise that henceforth they are answerable to a smarter and younger generation of voters who cannot be fooled with empty one-time, money-generating schemes, loan waivers and hollow speeches. The voter has become smarter and cannot be taken for granted. The voters will demand good infrastructure, jobs, and investment in health and education.

The political parties involved should realise that the people are watching the developments and will express their disppointments in the next Assembly elections. The various political parties should settle their differences and offer good governance with focus on employment, infrastructure and farm distress.

**Veena Shenoy**
Thane

### Unsafe water

The public disclosure of water-sample tests should be seen as an attempt by the Central authorities to promote transparency among state agencies. There is a rising need to sensitise stakeholders about people's fundamental right to get clean and safe drinking water — and the issue mustn't be politicised.

One has already witnessed numerous exhortations by the apex court to brainstorm and follow-up on a chronic problem — the air quality in the NCR region. Despite that and penal regulations to curb stubble-burning activities, the problem persists due to the need for greater collaboration among state authorities.

Civic agencies responsible for control of air/water pollution must focus on long-term solutions based on a preventive approach.

**Girish Lalwani**
New Delhi

Published by N. Ravi at Kasturi Buildings, 859 & 860, Anna Salai, Chennai-600002 on behalf of THG PUBLISHING PVT LTD., and Printed by D. Rajkumar at Plot B-6 & B-7, CMDA Industrial Complex, Maraimalai Nagar, Chengleput Taluk, Kancheepuram Dist., Pin: 603209. Editor: Raghavan Srinivasan (Editor responsible for selection of news under the PRB Act). ISSN 0971 - 7528