



Messy fix

The amended insolvency code risks hurting the key aims of the original law

Less than 12 months after the Insolvency and Bankruptcy Code came into force with the goal of easing the resolution of corporate insolvency, the Central government has passed an ordinance that significantly amends the original law. The aim of the changes is clearly stated in the preamble: "...to strengthen further the insolvency resolution process, it has been considered necessary to provide for prohibition of certain persons from submitting a resolution plan, who, on account of their antecedents, may adversely impact the credibility of the processes." The ordinance then specifies the categories of persons who are deemed ineligible to participate in resolving a corporate entity's debt once it has been put under the process of insolvency resolution by creditors. Here lies the nub. While there is no quibble about the need to deny unscrupulous and wilful defaulters who have put banks and other creditors to substantial financial hardship the opportunity to regain control of corporate assets that have been put under resolution, the category of people barred is too broad and risks the very objectives of the original code. It is germane to remember here that the IBC is not intended to serve as a mere instrument of liquidation. Instead, it is to provide an enabling legal framework for the "reorganisation and insolvency resolution of corporate persons... in a time bound manner for maximisation of value of assets of such persons" and to promote entrepreneurship, among other goals.

By including promoters and those in management whose loan accounts are classified as non-performing assets for one year or more, as well as any person disqualified to act as a director under the Companies Act, the amendment risks becoming an instrument of blunt force that hurts more than it helps. As policymakers and central bankers have often pointed out, not all bad loans are a result of mala fide intent on the borrower's part. Specifically, in cases where companies have ended up struggling to service debt as a result of unpredictable external factors that adversely impacted their operations and financials, barring the promoters of such firms from a chance to restructure and turnaround the business, merely because the loans have turned sour, is unfair to both the entrepreneur and the enterprise itself. For instance, steel companies were among the worst hit in the wake of the global downturn in commodity prices and depressed demand. It has been reported that the promoters of some of these debt-laden steelmakers were considering participating in bids to restructure the debt and businesses and hoping to run them again. By widening the scope and definition of those it considers ineligible to participate in the resolution process and, worse, making the amendments retrospective to cover even those cases already referred to the National Company Law Tribunal, the Centre may have ended up, unintentionally, throwing the baby out with the bathwater.

Desert storm

The chaos in the region makes Egypt's counter-terror task even more challenging

The murderous attack on Friday at a Sufi mosque in the Sinai Peninsula that killed at least 305 people is a grim reminder of the threats Egypt faces from a stronger and more brutish Islamist militancy. Over the past three years, groups operating from the Sinai peninsula, particularly a local arm of the Islamic State, have carried out several terror attacks. The ease with which dozens of militants, carrying the IS's black flags, unleashed the assault on the mosque in Bir al-Abed, surrounding it with vehicles and attacking devotees with bombs and guns, has set alarm bells ringing in Cairo. This is the bloodiest attack in modern Egypt's history. President Abdel Fattah el-Sisi, the general who had captured power through a coup in 2013 promising stability and security, has vowed to respond with "brutal force". General Sisi had made similar promises after terrorist strikes in the past, including when a Coptic church in the mainland was bombed by the IS on the Palm Sunday this year, killing at least 45 people. With the Bir al-Abed mosque attack, the terrorists have now raised the stakes and also called into question General Sisi's counter-insurgency strategy.

The IS's strategy in Egypt is similar to that in Syria and Iraq. The group is targeting Christians, who make up about 10% of the Egyptian population, and minority sects within Islam. It makes no secret of its plan to deepen the sectarian divisions in societies and then exploit these divisions to win over headline Sunni segments. Egypt's Sinai, a region historically neglected by Cairo and with a vast terrain of desert, mountain and long coasts, is an ideal operational base for the IS. For the same reasons, counter-insurgency in the Sinai is a challenging task even for a formidable military force. The Egyptian military has also been under strain on account of regional developments since the fall of Muammar Qadhafi's regime in Libya in 2011 and the resulting chaos in North Africa. The black market trade in weapons from Qadhafi-era depots has strengthened militant groups, including those in the Sinai. Besides, it is suspected that following the more recent collapse of IS networks in Iraq and Syria, Egyptian Islamists who were fighting in those countries have returned home and joined local networks. This poses a daunting challenge to President Sisi. The battle before Cairo is not just a counter-insurgency mission. It has to defeat the militants and disrupt the supply of weapons, which is a huge challenge given the difficult terrain of the Sinai. But the Egyptian government also needs to take steps to address the long-term grievances of the Sinai's population and deny militants local sympathy or support.

Smart-balancing China

India must have a clear vision for a regional order, and nudge China towards it



HAPPYMON JACOB

How do you deal with an inscrutable, revisionist and rising superpower next door with whom you have had a historical rivalry and whose brazen inroads into your traditional sphere of influence leave you embittered, but whose trading relationship is important to you? There are no easy answers even though we often come across many 'simple and straightforward' solutions: ranging from military options to cutting off trade ties. The recent revival of the 'Quadri-lateral' (or Quad) and the consequent talk of an 'Asian NATO' have brought the India-China rivalry back to the limelight. Let's be clear: how to 'balance' China will occupy a great deal of India's strategic attention in the years ahead as China charts its course towards superpower status. Any such strategising by India needs to be prudently thought out.

In perspective

For President Xi Jinping's new China, the days of "hiding capabilities and biding time" of the Deng era are finally over - it's time to become "a global leader in terms of composite national strength and international influence". If it utilises the power vacuum left by Donald Trump's 'reluctant superpower', China's superpower ambitions are bound to have a system-shaping impact on the Asian region. There will be China-led alliances, Chinese client states and the establishment of Chinese spheres of influence. The alleged China connection to the recent 'regime change' in Zimbabwe is perhaps a harbinger of things to come.

Moreover, it would ensure that its access to overseas resources/markets and the oceanic trade

routes are unhindered. In doing so, it is increasingly seeking to build military facilities overseas and offset the U.S.-led coalition in the region. In this big picture of Chinese grand strategy, New Delhi, seen increasingly aligned with the U.S., is a spoiler. Denying India entry into the Nuclear Suppliers Group, repeatedly blocking UN sanctions against Pakistan-based terrorists, and ignoring India's sensitivity over the China-Pakistan Economic Corridor are outcomes of this vision.

There are several sources of increasing Sinophobia in India. For one, Chinese revisionist claims in the land and oceanic space have been a major source of concern. Beijing's deployment of naval assets to enforce its claims across the South China Sea, construction of artificial islands in the region, and the rejection of a UN tribunal judgment on a complaint filed by the Philippines, last year have only strengthened this feeling. China has also been increasing its naval presence, including dispatching its nuclear submarines on patrol, in the Indian Ocean. Would this eventually lead to a more permanent Chinese naval presence in the region? It is in this broader context that China's revisionist statements on Sikkim and Arunachal Pradesh are worryingly viewed in New Delhi.

Second, along with military assertion, Beijing has also been stepping up its political and economic footprint in the region, dismissing New Delhi's protests. Third, and perhaps most importantly, what worries New Delhi is the ever-strengthening China-Pakistan military alliance and its implications for the country: the insecurity stemming from a so-called 'nutcracker' situation.

Dilemmas of checkmating

The current Indian strategies to 'checkmate' China seem more zero-sum and less efficient. To be sure, New Delhi has chosen to adopt an unequivocal U.S.-centric strategy to deal with Beijing, most



recently the Quad. There are several problems with this approach: the U.S. is a quickly-receding extra-regional power whose long-term commitment to the region is increasingly indeterminate and unsure; U.S.-China relations are far more complex than we generally assume; and Australia is caught between the U.S. and China. While India may have shed its traditional reticence about a strategic partnership with the U.S., it would still not be what Japan is to the U.S., nor should it.

The second broad policy direction seems to be to compete with China for regional influence in South Asia. Let's be realistic: trying to match the powerful yuan, backed by vigorous political support from Beijing, with our humble rupee is a losing battle. Military preparedness to offset any potential Chinese aggression is something that India can and should invest in. But again, Chinese military aggression has really not been India's central concern, but a China-dominated region in which India is hemmed in and forced to play second fiddle. Military preparedness, in which we will inevitably lag behind China, alone cannot address such a concern.

Some have suggested that India should use its \$70 billion-strong trading relationship with China as a bargaining chip to check Chinese behaviour. However, doing so would hurt both sides. While it is true that India-China bilateral trade is heavily skewed in favour of

China, let's not forget that China's exports to India comprise under 3% of its total exports (and India's exports to China is 3.6% of its total exports). Boycotting Chinese goods would also mean Indian consumers paying more to get them from elsewhere. Clearly then, trade as a bargaining chip vis-à-vis China is just a popular urban myth.

So what then are our options? Adopting a straightforward balancing strategy (which is what states normally do when faced with a stronger neighbour) may become costly, counter-productive, and not deliver the desired results. Bandwagoning (jumping on board the wave of the future, in this case, China), on the other hand, may be both undesirable and insufficient for obvious reasons. Neither of these two mutually exclusive options are ideal for serving India's current and future interests vis-à-vis China. Hence New Delhi would be better served by adopting a more nuanced balancing strategy, a strategy of 'smart-balancing', towards Beijing, one that involves deep engagements and carefully calibrated balancing, at the same time.

A possible road map

Let's examine some elements of such a strategy. First of all, it would involve co-binding China in a bilateral/regional security complex: that is, view China as part of the solution to the region's challenges (including terrorism, climate change, piracy, infrastructural/developmental needs) than as part of the problem, or the problem itself. Some efforts in this direction are already under way such as India-China joint anti-piracy missions in the Gulf of Aden. The two countries could consider initiating regular, structured consultations in this regard. In other words, enhancing security cooperation with China is a sure way of alleviating the persistent security dilemma between them. A mutual 'complex interdependence' in economic, security and other do-

mains should be strengthened and front-loaded over zero-sum competition.

This security cooperation should most certainly be enhanced in the Indo-Pacific where India should, even while being part of the Quad, talk of cooperating with China. Language is important: talk about security community and joint efforts than containing China.

Second, India should cooperate with and trust China while at the same time keeping its (gun) power dry, for after all, in the anarchic international system that we inhabit, the role of military strength in guaranteeing national security cannot be underestimated.

Third, New Delhi's response to Beijing's refusal to act against Pakistan-based terrorists needn't be strait-laced. However, while Beijing is unlikely to make Islamabad politically uncomfortable by public terror-shaming, the more China gets involved in Pakistan, the less it can afford to ignore terrorism within Pakistan. Around 30,000 Chinese nationals currently reside in Pakistan (and over 71,000 Chinese nationals visited Pakistan last year) and these numbers will only increase over time which will perform motivate Beijing to 'work with' Islamabad on the terror question. That is precisely where New Delhi should use its diplomatic skills to make an impact.

India urgently needs to develop a clear vision for a stable regional security order and work out what role India would like China to play in that vision and how it can nudge China towards that. Keeping China out of the regional security order is not realistic, letting China dominate it is not desirable: smart-balancing China within such an order is indeed the optimal strategy.

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Locked out, without a GI tag

The existing law for Geographical Indications leans too heavily on documentary proof



JUPI GOGOI

The law of Geographical Indications (GIs) is linked to the terroir, that is the quality of a product is essentially attributable to the territory where the product originates from. GIs support local production and are an important economic tool for the uplift of rural and tribal communities. Unlike other Intellectual Property Rights (IPRs) which guarantee the protection of individual interest, GI is a collective right. If their products qualify, producers can use the collective GI mark while commercially exploiting their products.

Path to introduction

India implemented a sui generis legislation on GI in 1999, a prime reason being its obligation to have a law on GI as a member of the World Trade Organisation-Trade-Related Aspects of Intellectual Property Rights (WTO-TRIPS).

The politics behind the incorporation of GI in TRIPS is revealing. The United States was not a supporter of GI, and it was lobbying by the European Union (EU) that

ensured its inclusion in TRIPS. The EU already had its domestic mechanisms in place to protect GIs and was keen to protect its products in international markets.

Interestingly, the debate on GI in India has never gone beyond Article 23 of TRIPS, which gives a preference to wines and spirits over other goods. Scholars in India have always observed that the additional protection of wines and spirits is a huge setback for GI trade related to the developing countries whose GIs are largely related to agricultural and handicraft products. The protection given to wines and spirits is absolute and unqualified, and unlike right holders of other goods, the proprietor of GI relating to wines and spirits does not have to prove that incorrect use of the geographic origin is misleading as well.

Shortcomings in Indian Act

As India has failed over the years to introspect on its own domestic legislation, it is important to highlight the shortcomings of the Indian GI Act. It is important to note that TRIPS only provides a minimum standard of protection. Nowhere is there an insistence on a particular framework for protection of GI. In fact, TRIPS does not even mandate a sui generis mode of protection for GI.

Against this backdrop, proof of



origin is a mandatory criterion for registering GIs in India. This provision is borrowed from the EU's regulations on GI protection. What is cause for concern is not proof of origin as a criteria to register GI, but the focus on historic proof in the form of documentary evidence (such as gazetteers, published documents, news articles, advertisement materials) to bring out the historic development of GIs as laid down under GI Rules, 2002, and clarified by the GI Manual of the Office of the Controller General of Patents, Designs and Trademarks, and Registrar of Geographical Indications to establish proof of origin. The point here is about the rationale behind including such a provision in our law as there was no mandate under TRIPS to do so.

Documentary evidence as proof

of origin may be a foolproof mechanism to ensure the link between the product and territory, but in a country such as India where there are regions like the Northeast where oral history has had far wider convention over written history, this provision will prove to be a formidable hurdle.

The case of Assam

Assam has been exploring its natural, agricultural and traditional products as potential GI material. One such example is a traditional rice wine called 'Judima' which is made by the Dimas tribe of Dima Hasao, one of the autonomous hill districts of Assam. The State government has been tracking academic discourse on the subject with the intent of exploring possibilities in registering it. But a stumbling block has been the difficulty in gathering documentary evidence as proof of origin. It is the same case with many other products from the Northeast. For example, in the case of 'Judima', the word 'Ju' stands for drink and 'Dima' for Dimas, but the absence of any documentary proof makes the case a difficult one to prove.

Therefore, what is the rationality behind including and retaining such provisions in the law? For most products, especially those of tribal communities, this is bound to be a recurrent problem. A few

years ago, India faced difficulties in a patent case involving turmeric when two scientists of the University of Mississippi Medical Centre, were granted the U.S. patent for the use of turmeric in wound healing. India's Council of Scientific and Industrial Research (CSIR), which opposed this, was asked by the U.S. Patent and Trademark Office to submit documentary evidence of usage of turmeric for healing purposes in India in order to revoke the patent. On finding the existing documentary evidence insufficient, CSIR was compelled to launch a project of translating ancient Sanskrit texts which were later produced as evidence, and accepted.

So, what happens in cases such where a written history is rare? Do the products of the region then not stand a chance under the GI law? In a particular instance, the GI Registry considered etymology in establishing proof of origin. However, this does not guarantee that a similar stance will be adopted while considering other potential GI products, especially when the existing law leans heavily on documentary proof. The GI authorities should amend the existing provision.

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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.

Terror in Egypt

The dastardly attack in Egypt by suspected Islamic State militants on a crowded mosque in Sinai confirms the deep entrenchment of the IS's tentacles of terror across the world. In exposing the vulnerability of nations, one after the other in the face of terror attacks, the incidents have once again exposed the true colours of the IS - savages of the modern era. The threat to Islam seems to lie from within, and the entire Islamic world, Muslim clergy and liberals must unite and denounce this cult of violence. Violence and bloodshed are unacceptable and antithetical to the ethos of a civilised world order as

ours. There also needs to be coordinated and sustained military action by all civilised nations against these barbarians who have scant respect for human life and dignity.

B. SURESH KUMAR, Coimbatore

Thinking big

All the mega projects of China in Tibet have a bearing on India's strategic and security needs ('Despatches' page - "China bets on mega projects in Tibet", November 26). Unlike the Indus Water Treaty with Pakistan, India has no such treaty with China on the sharing of waters flowing toward India and Bangladesh. China is likely to emerge as the ultimate controller of water

for nearly 40% of the world's population. Despite the Himalayas being known as the "water tower of Asia", most of the high-altitude cities here struggle with water shortages in the dry season. Along with population pressures, climate change, glacier melt and shifting rain patterns are now new issues. China's penchant for massive engineering projects should not be overlooked. These are issues that Indian officials should discuss seriously with their Chinese counterparts to ensure that flows toward India are not jeopardised. The trust deficit between China and India will persist as long as there is no transparency in the government and

industry. India needs to manage its own resources with or without the concern of China.

H.N. RAMAKRISHNA, Bengaluru

Patient skills

I feel the *British Medical Journal* study relates to what happens in the outpatient section of government hospitals as doctors there never devote much time in examining a patient (Open Page - "To be a doctor, be patient first", November 26). This is hardly seen in corporate/private hospitals as patients pay huge consultation fees and the consultation doctor has to be methodical in the way he examines a patient. As far as I know, most doctors in towns, villages

and suburban areas spend time in examining a patient. In the medical curriculum, students are given the required training to carry out a diagnosis. In medical college examinations, examiners focus on how a student examines a patient, records the patient's complaints and history. I feel that students should be trained to interact with a patient better and win his or her confidence, which will also help in better treatment outcomes. J.P. REDDY, Nalgonda, Telangana

Teacher and student

The report of a principal and teacher in Tamil Nadu having been suspended following the unfortunate incident of four schoolgirls

ending their lives after their teacher scolded them turns the spotlight on the feeling of insecurity of service for teachers and heads of institutions (Tamil Nadu editions, "Principal, teacher suspended over girls' death", November 26). Where is the education system heading to? Will students respect their teachers if the rule of law is student-centric and does not allow teachers to correct students? Educational institutions have to take a lot of measures to ensure children's safety, but do teachers need to be penalised this way? S. RAMAKRISHNASAYEE, Ranipet, Tamil Nadu

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