

## BusinessLine

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## Women in entrepreneurship

The financial and socio-cultural obstacles are huge, but not insurmountable

Only 14 per cent of the 58.3 million businesses in operation in India when the Sixth Economic Census was carried out in 2013-14 were owned by women, across formal and informal sectors in both rural and urban India. This is not a flattering statistic. A sizeable number of the 8.05 million women-owned businesses — over 83 per cent — did not have any hired workers; the corresponding number for male-owned businesses was about 70 per cent. Also, on average, women-run businesses are smaller than those run by men. However, there are many shining examples of women entrepreneurs who have not only set up successful ventures but have also carved out a niche for themselves. Kiran Mazumdar Shaw is one such woman entrepreneur. There are also some who gave up very successful corporate careers to turn entrepreneurs such as Falguni Nayar, a well-regarded investment banker who set up an e-commerce venture as she was turning 50 years of age. There are also the likes of Ritu Dalmia, who broke out of conservative industrialist families, to venture into the world of gourmet food and fine dining with a chain of restaurants. Each one of them is a trailblazer and an inspiration for others. More recently, the start-up boom in India has seen many young, professionally qualified women taking the plunge. Self-help groups and non-profits focussing on skill development in rural areas have helped women entrepreneurs bloom.

Setting up a business is not easy in India. It is even tougher for a woman. A would-be woman entrepreneur has to overcome socio-cultural biases, which requires her to prioritise home and family above all else and sacrifice her own aspirations. Access to finance is that much more difficult, whether from formal banking channels or from venture capitalists. Managing a male workforce entrenched in a patriarchal society poses its own challenges. It also doesn't help that many men are not supportive of women's ambitions and even attempt to break their confidence. Another problem unique to women is their failure to network with business associates as easily as men. Policy interventions have tended to be sporadic, superficial or poorly thought through, like the Centre's failed experiment with a women-only bank.

However, these issues are addressable. Mentoring of women entrepreneurs by specialists in various fields can encourage women who are tentative about taking that first step. Networking platforms for women entrepreneurs can provide some support. Most of all, socio-cultural changes need to be engineered to encourage women to set up business ventures.

## AGR ruling is unfair to telecom players

The apex court's latest ruling has only added to legal and policy confusion prevailing in the sector. It needs to be reviewed

PIYUSH JOSHI

The recent judgment of the Supreme Court in *Union of India v. Association of Unified Telecom Service Providers of India* (October 24, 2019), referred to as "AGR judgment", requires to be reconsidered by a larger Bench. This is necessary as the existing judgments of the Supreme Court, which serve as precedents on the matter, can only be effectively addressed by reference to a larger Bench. Such a definitive assessment is required for the Government to be able to address the other fallouts arising from the case.

The AGR judgement has held as follows:

**The licence fee** for grant of licence to build, maintain and operate telegraphs issued under Section 4 of the Indian Telegraph Act (ITA) need not be limited to revenue from the licensed operations but would cover all revenue of the licensee even from operations and sources not licensed under Section 4 of the ITA;

**Once licence** is granted under the section, it governs the relationship between the Government and the licensee; TRAI recommendations are not binding on the Central Government;

**The 2011 apex court judgment** in *Union of India v. Association of Unified Telecom Service Providers of India* was a binding precedent on the scope of AGR (adjusted gross revenue) and it had only permitted disputes to be raised in relation to each demand and not challenge the scope of "gross revenue";

**The revenue** of separate legal entities such as a subsidiary will not be taken into account for determination of "gross revenue" and it is open to licensees to undertake business operations that do not require a telecom licence in separate subsidiaries. Revenue of branches,

even those outside India, will be taken into account for "gross revenue" since a branch is part of the same legal entity;

**A telecom service provider's** (TSP's) gross revenue includes: (i) the proceeds from sale of shares; (ii) any gain over and above the book value for the year in question based on assessment of the opening statement and closing statement at the end of the year; (iii) all interest and dividend earned by a TSP; (iv) income from consultancy and management services; (v) interest from inter-corporate loans; and (vi) non-refundable deposits; and

**No licence fee** can be charged in areas for which spectrum has not been allocated as no licence activity came into play.

The issues arising from the AGR judgment that need further consideration are explained below:

**The AGR judgment** has held that the grant of licence under Section 4 of the ITA is also in the nature of a resource that is covered by the in pronouncement in the *Natural Resource Allocation* case, thereby making it equivalent to a natural resource that the state is bound to hold for the benefit of the citizens and ensure equal distribution to sub-serve the common good. This is highly problematic not only for the licensees but also for potential investors and the Government itself.

By covering even the grant of licence under Section 4 of the ITA as being equivalent to a natural resource, the AGR judgment has limited the inherent right vested with the Central Government over the telecom sector. It also imposes an obligation on the Centre to ensure that each licensee implements its telecom operations in a manner to sub-serve the common good.

A Constitutional Bench of five judges in the *Natural Resource Allocation* case held "spectrum" to be a natural resource. The three-judge Bench in the AGR case could not



The telecom sector has faced seismic events from conflicting rulings PV SIVAKUMAR

have expanded or interpreted the scope of the judgment to include grant of licences under Section 4 of the ITA, as equivalent to a natural resource such as spectrum or coal. The equating of the licences under the section to natural resources, such as spectrum itself, should be a cause of concern for all telecom operators, including those presently calling for its enforcement, because if this position is allowed to remain as the law, the same can be used to potentially argue that telecom services should be provided for free or at less than cost.

**The wording** of Section 4 of the ITA is clear that the licence may be granted on such conditions "and in consideration of such payments as it thinks fit". Thus, the section makes it clear that the licence fee is in the nature of a "consideration" for the licence granted. The AGR judgment reaffirms the position that the licence granted under Section 4 is in the nature of a contract.

Hence, it is clear that the term "consideration" used in Section 4 would relate to the "consideration" for a contract under the general law governing contracts and clearly means that there is a direct linkage between the licence provided and the consideration for the same in the licence agreement. However, even though the AGR judgment reaffirms that the licence under Section 4 is in the nature of a contract, it proceeds to hold that it is up to the Government itself to unilaterally

determine the extent of "gross revenue", therefore, striking at the root of the need for consensus on the consideration between the Government and the TSP and the fact that a party cannot unilaterally determine the scope and extent of the consideration.

The reasoning by the Supreme Court in the AGR judgment has effectively converted the consideration for the licence into a tax/levy, since the ruling holds that it is the exclusive right of the Government to define revenue; the scope of what the Government can claim is not limited to revenue from the licensed operations but would cover any and all revenues of the TSP.

This converts the "consideration" stipulated under Section 4 of the ITA from being limited to the telecom service for which the licence is granted, to a unilateral levy for the grant of the licence. It is a settled principle of law that any imposition of a tax/levy would require an underlying law authorising the same. Clearly, there is no such authority under the ITA for the same. The AGR judgment has failed to consider the distinction between "consideration of a contract" and law developed through multiple case laws by the Supreme Court relating to taxes, including judgments of the Constitutional Bench. This issue too needs to be re-examined by a larger Bench.

The AGR judgment could also potentially again raise the spectre

of claims by foreign investors under bilateral investment treaties (BITs) in view of loss of shareholder value. The AGR judgment by holding that even income from sale of shares will be covered by the scope of "gross revenue" to be shared with the Government, further adds to potential grounds for BITs against India. This again calls for review by a larger Bench so that the case laws that have been overlooked can be considered.

The AGR judgment draws attention once again to the fact that critical infrastructure sectors should not be open to such large-scale impact by court judgments and instead there is a case for establishing a more consolidated stable statutory regime governing critical infrastructure sectors, which can reduce the scope for courts or tribunals in exercising their discretion.

The Indian telecom sector has faced seismic events from multiple, varied and conflicting judgments since its opening for private sector investment in 1994. In *Delhi Science Forum v. Union of India*, it was held that courts would not interfere in matters of policy.

Subsequently, the 2012 judgment in *Centre For Public Interest Litigation & Ors v. UOI* (more commonly referred to as the "2G Judgement"), the court proceeded to hold that the first-come-first-serve policy was arbitrary and quashed 122 telecom licences and shifted the method of allocation of spectrum. This resulted in the consolidation in the telecom industry to effectively six operators. Now, the AGR judgment has resulted in an aggregate payment requirement of more than ₹1.4 lakh crore on the surviving telecom companies, with the only telecom company escaping its full impact being a more recent entrant.

For all the aforesaid reasons, the AGR judgment requires a detailed review.

The writer is Partner, Clarus Law Associates, New Delhi

## Now, there is a global revolt against populism

The flaws of liberal globalisation are real, but populist policies have destroyed growth and escalated corruption

DAVID BROOKS

Have you noticed that the world is on fire? Crowds are chanting "Death to Khamenei" in Iran while the regime kills them *en masse* and shuts down the internet. Throngs are marching to preserve democratic rights in Hong Kong; Warsaw, Poland; Budapest, Hungary; Istanbul; and Moscow. The masses are angry in Pakistan, Indonesia and Saudi Arabia and toppling leaders in Lebanon and Bolivia.

This is the most widespread surge in global civic unrest since 1989. It's a story 10 times bigger than impeachment, although the two are related. The seeds of today's unrest were planted in those events of 30 years ago—the fall of the Soviet Union, the spread of globalisation, and all the rest. That was the heyday of liberal democratic capitalism, free market fundamentalism, the end of history.

We all know now what many of us didn't appreciate then: Globalised democratic capitalism was going to spark a backlash. It led to growing economic and cultural clashes between the educated urbanites,

who thrived, and the rural masses, who were left behind. It was too spiritually thin, too cosmopolitan and deracinated. People felt that their national cultures were being ripped away from them.

The populist backlash came in different forms in different parts of the world. In Central and Eastern Europe it came in the form of nationalist strongmen—Victor Orban, Vladimir Putin, the Law and Justice party in Poland. In Latin America it came in the form of the Pink Tide—a group of left-wing economic populists like Hugo Chávez and Nicolás Maduro. In the Anglosphere it was white ethnic nationalism of Donald Trump and Brexit. In the Middle East it was Muslim fundamentalism. In China it was the increasing authoritarianism of Xi Jinping. In India it was the Hindu nationalism of Narendra Modi.

In places, the populist wave is still rising. The yellow vest movement in France and the protests in Chile are led by those who feel economically left behind. But it's also clear that when in power the populists can't deliver goods. So now in many places we're seeing a revolt against



A new social contract is needed

the revolt, urban middle-class uprisings against the populists themselves. The core problem is economic. Populist economic policies of left and right destroy growth. Venezuela is an economic disaster. In Mexico the left-wing populist policies of Andrés Manuel López Obrador have brought growth to a halt. The IMF projects Latin American growth could fall to 0.2 per cent.

Trump's trade war has lowered American economic dynamism. Xi has walked away from market reforms and ushered in an economic slowdown. Under tax-hiking populist leader Imran Khan in Pakistan,

car sales fell 39 per cent in the latest quarter. All across the world, members of the new middle classes feel trapped and abandoned.

## Self-enrichment

The second thing the populists have brought is corruption. Trump's *quid pro quo* attempt with Ukraine is of a piece with the corrupt practices ushered in by populists all around the world. They vowed to smash the rules, but it turns out it was mostly for self-enrichment and self-protection.

Evo Morales stands accused of trying to rig an election in Bolivia. Former Lebanese Prime Minister Saad Hariri gave \$16 million to a bikini model while his countrymen were scraping by. In the US, Washington insiders are rising up to curtail Trump's normlessness. Data from the Corruption Perceptions Index show that people around the world feel that corruption is on the rise.

The populist/authoritarian regimes are losing legitimacy. The members of the urban middle class in places like Hong Kong and Indonesia are rising up to protect the

political and social freedoms. These days, it doesn't take much to set off a giant wave of anger. In Lebanon it was a proposed tax on WhatsApp. In Saudi Arabia the government raised taxes on hookah restaurants. In Chile it was a proposed 4 per cent rise in subway fares.

The overall message is that the flaws of liberal globalisation are real, but the populist alternative is not working. The protests in all these places are leaderless, so it's unrealistic to expect them to have policy agendas. But the big question is, what's next? What comes after the failure of populism?

The big job ahead for leaders in almost all these nations is this: Write a new social contract that gives both the educated urban elites and the heartland working classes a piece of what they want most. The working classes who have been supporting populists need a way to thrive in the modern economy. The educated elites want their democratic freedoms protected and to live in ethnically diverse pluralistic societies.

Whoever can write that social bargain wins the future. **NR**

## LETTERS TO THE EDITOR

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

## Disclosure of financial stress

This refers to the editorial 'Forewarning investors' (November 22). On several occasions the lag in the disclosure of price-sensitive data and information by listed corporate bodies to the stock exchanges have adversely affected the interests of investors.

Reforms such as stipulation to publish Business Responsibility Report (BRR), higher net worth requirement for Portfolio Management Scheme (PMS), reduction in timeline for completion of rights issue, and reporting the default in the servicing of loans from financial institutions will pave the way for improving corporate governance, besides bringing in financial discipline in investment-related matters.

In terms of the guidelines of the banking regulator, banks are required to categorise the credit facility as Special Mention Account (SMA)-1, if the repayable amount

remains overdue between 31 and 60 days. As soon as the loan of the listed company slides into the SMA-1 category it must be reported to the market regulator for the information of the investors.

At a time when the dependability of the audited and/or reviewed financial statement and the rating of the rating agencies have been subsequently proved questionable, the timely information about the financial stress of the listed companies will enable the investors to take a prudent decision on the investment made and/or intending to invest in those listed entities.

The compulsion to disclose the stress in the loans of the listed companies will positively impact the quality of the loans availed from the banks and other financial institutions and consequently curb the growth in NPAs too.

VSK Pillai  
Kottayam

## Reviving the realty sector

This refers to 'Realty revival package, not convincing' (November 22). The ground reality is that there is a lack of demand for completed houses since the purchasing power of the people is at a low and developers are finding it difficult to clear the inventory of dwelling units. Hence the government pumping in ₹25,000 crore may not help trigger a recovery of the sector. Only quick sale of assets will help the sector revive.

NR Nagarajan  
Sivakasi

## Power sector woes

This is with reference to 'Power sector: Focus on other pain points' (November 22). Uninterrupted electricity supply is a pre-condition/pre-requisite for the overall socio-economic growth and development. The condition of the power sector is alarming. The government should rise above petty

politics and act swiftly to restore investor confidence in the sector by doing away with corruption in the sector and also curbing power theft. Electricity supply is not charity and the consumer has to pay for it. Non-availability of electricity is one of the main reasons for closure of many industrial units and small-scale industries. If India has to generate employment opportunities for its ever growing population, the government has to improve supply of electricity to the most backward areas. It is pathetic to see many tribal areas and small villages going without electricity for ages even as India is aiming to become a super power in the near future.

Veena Shenoy  
Thane

## Electoral bonds

This refers to 'Only the corrupt are resisting electoral bonds: Piyush Goyal' (November 22). But, curi-

ously, the Commerce Minister has thought it wise to condemn the Congress' demand for a Joint Parliamentary Committee probe on electoral bonds as a sign of frustration of the 'corrupt who have been rejected by the people' even as he self-praisingly asserted that 'for the first time, we put a stop to corruption and black money being pumped into politics'. The moot question that obviously arises is: Has political corruption now become a thing of past?

The Congress party's allegations pointing out that the electoral bonds are a fraud because neither the donor nor the recipient political party need to disclose the source of funds and unlimited amount of money can be donated without any accountability, does not appear to be based on some hearsay. Such a scenario cannot be ruled out.

Vinayak G  
Bengaluru

## SUKIYAKI

MANJULA PADMANABHAN

