



Risky recourse

LIC's proposal to acquire a majority stake in IDBI Bank raises regulatory concerns

The Insurance Regulatory and Development Authority of India has approved a proposal to allow the Life Insurance Corporation of India to increase its stake in the ailing state-owned IDBI Bank to 51%. The plan envisages the insurer injecting much-needed capital into the financially stressed lender, which was placed under the Reserve Bank of India's prompt corrective action framework in May 2017 as a consequence of its non-performing assets rising beyond a threshold. While there are no details on how exactly this capital infusion will take place – reports suggesting that the LIC may acquire the additional 40% stake it would need to reach 51% shareholding from the Government of India – market speculation and media reports have estimated figures north of ₹10,000 crore. While for the LIC the sum is a small fraction of the ₹1.24 lakh crore it received in just first-year premiums in the year ended March 31, 2017, for IDBI Bank the funds would almost equal the ₹12,865 crore in capital infusion it got from the government in the last fiscal. Whether this will be adequate to even staunch the flow of red ink at the troubled bank, leave alone help it turn around, is another matter. The bank posted a net loss of ₹8,238 crore in the 12 months ended March 31, 2018, and is facing the prospect of more losses with gross non-performing assets rising to 28%.

The proposal raises several troubling questions. The government clearly sees it as a relatively painless way to recapitalise the bleeding bank without adversely impacting its fiscal position, but the risks in increasingly banking on state-controlled cash-rich corporations to help bail out other state-owned companies or lenders are too significant to be glossed over. Then, there are the regulators. The IRDA, whose mission is to “protect the interest of and secure fair treatment to policyholders”, is reported to have exempted the LIC from the well-reasoned 15% cap on the extent of equity holding an insurer can have in a single company. This puts at risk the interests of the premium-paying customers of the LIC. The Securities and Exchange Board of India has in the past waived the mandatory open offer requirement under its take-over regulations when it involved a state-run acquirer and another state enterprise as the target. As the capital markets watchdog, SEBI has an obligation in all such cases to weigh the interests of the small investor. And the RBI, as the banking regulator, should not ignore the contagion risks that the level of “interconnectedness” the proposed transaction would expose the entire financial system to.

Seychelles template

Soft diplomacy in the Indian Ocean Region will serve India better

New Delhi has clearly opted for a charm offensive in the Indian Ocean Region (IOR). The red carpet laid out for the visiting Seychelles President Danny Faure last week came against the backdrop of setbacks in the bilateral relationship owing to the Assumption Island agreement being put on hold. The pact, to build a naval base on the island, was seen as a major strategic enhancement of India's IOR naval capacities and had been under discussion since 2003. It was finally signed during Prime Minister Narendra Modi's visit to the Seychelles in 2015. The deal was to include 30-year access to the base as well as permission to station Indian military personnel on the ground, with facilities on the island funded by India, owned by Seychelles and jointly managed. After Opposition protests about loss of sovereignty, however, it had to be renegotiated and an amended version was signed in January 2018. Even that proved insufficient. Mr. Faure lacks the numbers in the legislature to ratify it, and with the Opposition sticking to its stand he announced in early June he would not be taking the agreement with India forward. Instead, Seychelles would build the naval facility “on its own”. Given the blow to India's plans, Mr. Faure may well have expected a cold reception in India. However, both sides decided to walk around the minefields relating to Assumption Island, with Mr. Modi saying they would work on the project “keeping in mind each other's interests”. India also announced a credit line of \$100 million for Seychelles to purchase defence equipment from India to build its maritime capacity, offered to finance civilian infrastructure including the official buildings, and handed over a Dornier aircraft for maritime surveillance purposes.

This is good strategy. It would have been pointless to push the Seychelles President for a more concrete assurance on the Assumption Island project, as he has little room for manoeuvre. India had earlier drawn a blank in attempting to negotiate directly with the Seychelles Opposition leader, Wavel Ramkalawan, who is of Indian origin. Until 2020-21, when Seychelles is due for presidential and parliamentary elections, it may not be possible to move the agreement further for ratification; rather than renegotiate or cancel it entirely, it is best to keep it in abeyance. This softer approach adopted by the government is in remarkable contrast to the strong-arm tactics it has used in the past with other countries in the IOR, such as the Maldives. India's very public statements against the Abdulla Yameen government have now led to a considerable setback to its strategic position there, with the Maldives insisting on sending back Indian naval and coast guard helicopters from its atolls. A less confrontational approach in the case of Seychelles, with quiet negotiations instead of public re-priming, indeed appears to have had a more salutary effect.

Bhima-Koregaon and the fault in our laws

The Unlawful Activities (Prevention) Act must be cleansed of its vast discretionary powers



GAUTAM BHATIA

On December 1, 1948, Professor K.T. Shah rose to make an impassioned speech in the Constituent Assembly. “The autocrat, the despot,” he warned, “has always wished, whenever he was bankrupt of any other argument, just to shut up those who did not agree with him.” Along with many other members of the CA, he was objecting to the wide range of restrictions that had been imposed upon fundamental rights in the draft Constitution. Drawing attention to the multiple “Public Safety Acts” and “Defence of India Acts” that had been the favourite weapons of the colonial regime, speaker after speaker expressed the concern that, despite the best intentions of the Assembly, the Constitution could easily be interpreted to authorise the continuation of these hated laws.

The arrest of five individuals in early June, ostensibly for instigating the riots at Bhima-Koregaon at the beginning of the year, throws the fears expressed in the CA into sharp relief. The accused, who include activists and lawyers, have been booked under the Unlawful Activities (Prevention) Act (UAPA). An examination of the UAPA shows how, in one overarching “anti-terrorism law”, vast discretionary powers are conferred upon state agencies, judicial oversight is rendered toothless, and personal liberty is set at naught.

Boundless discretion

The UAPA authorises the government to ban “unlawful organisations” and “terrorist organisations” (subject to judicial review),

and penalises membership of such organisations. The problems begin with the definitional clause itself. The definition of “unlawful activities” includes “disclaiming” or “questioning” the territorial integrity of India, and causing “disaffection” against India. These words are staggeringly vague and broad, and come close to establishing a regime of thought-crimes. The problem of excessive breadth is then carried over into the “membership clauses”, which are the heart of the UAPA. “Membership” of unlawful and terrorist organisations is a criminal offence, and in the latter case, it can be punished with life imprisonment. But the Act fails entirely to define what “membership” entails. Are you a “member” if you possess literature or books about a banned organisation? If you express sympathy with its aims? If you've met other, “active” members? These are not theoretical considerations: charge sheets under the UAPA often cite the seizure of books or magazines, and presence at “meetings”, as clinching evidence of membership.

In 2011, the Supreme Court attempted to narrow the scope of these provisions, holding that “membership” was limited to cases where an individual engaged in active incitement to violence. Anything broader than that, it ruled, would violate the constitutional guarantees of freedom of speech and of association. The application of this ruling, however, has been patchy and arbitrary: one judge of the Bombay High Court invoked it to grant bail to some members of the Kabir Kala Manch music troupe, while another judge ignored it and refused bail to other members of the same troupe (they were ultimately granted bail by the Supreme Court).

Despite the verdict of the Supreme Court, therefore, the wide



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and vague provisions of the UAPA allow governments great and virtually unbridled power to arrest people under boundlessly manipulable justifications, such as “having suspected Maoist links”. At this point, the second serious problem with the UAPA regime kicks in: Section 43D(5) of the Act prohibits courts from granting bail to a person if “on a perusal of the case diary or the [police] report ... [the court] is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true.”

Effacement of liberty

The case diary and the charge sheet is the version of the state. Therefore, under the UAPA, as long as the state's version appears to make out an offence, a court cannot, under law, grant bail. When we juxtapose this with the inordinately slow pace at which criminal trials progress, Section 43D(5) of the UAPA is effectively a warrant for perpetual imprisonment without trial. This is not a theoretical concern either: on more than one occasion in recent years, terror accused have been acquitted after spending more than a decade in jail. This is something for which there can be no compensation or restitution; and it is only made possible because the law places an unbreakable shackle upon personal liberty.

This too was something that the framers of the Constitution fore-

saw, and wished to avoid. Maulana Hasrat Mohani, the great freedom fighter and poet, commenting on the same set of provisions as K.T. Shah, observed that “so long as you do not prove anything openly against anybody in a court of law, it should not be lawful to detain anybody.” His concern was disarmed when the CA decided to have a specific provision that authorised preventive detention (Article 22). However, as the CA debates reveal, the provision was meant to be used in rare and exceptional cases. The framers did not intend – and the Constitution does not contemplate – the kind of perfect storm that exists when broad and vague provisions of public security laws are combined with statutory bars upon the grant of bail, and a legal system that takes years to complete a criminal trial.

This is not to say that the state always, or even often, abuses its power. The purpose of a Constitution and a bill of rights, however, is to establish a “culture of justification” where the state cannot abuse its power. Civil and political rights are based upon the understanding that at no point should so much power, and so much discretion, be vested in the state that it utterly overwhelms the individual. The women and men who occupy the high offices of the state may have the best of intentions, but they are human like the rest of us, and therefore imperfect. The Constitution exists to protect us from the consequences of those imperfections.

This is why the traditional argument in defence of laws such as the UAPA – that the state must be given a strong hand to control terrorist and other violent and disruptive activities – proves too much. It proves too much because it subordinates every other constitutional value – freedom of speech, personal liberty, the right to a fair trial – to the overarching

concern of order. Such an attitude can be justified only in times of war or Emergency (and even then, subject to safeguards). But what the UAPA does is to normalise this “state of exception”, and make it a permanent feature of the legal landscape. One of our great judges, Justice Fazl Ali, expressly warned against it when he declared, “I do not think that it was ever intended that Parliament could at its will treat the normal as the abnormal or the rule as the exception.”

Transformative Constitution

The Bhima-Koregaon arrests provide us with yet another opportunity to rethink a legal regime that has obliterated the distinction between the normal and the abnormal. The power to keep citizens incarcerated for long periods of time, on vague charges, and without affording them an opportunity to answer their accusers in a swift and fair trial, is an anathema to democracy and the rule of law. The UAPA's stringent provisions should go the way of its predecessors – the Terrorist and Disruptive Activities (Prevention) Act and the Prevention of Terrorism Act. They should be removed by Parliament, and, in the alternative, struck down as unconstitutional by the Supreme Court. And if that is not feasible, then there must at least be a change in the legal culture, with the courts following the example of the Bombay High Court in the first Kabir Kala Manch case, and granting bail unless the state can produce some cogent proof of criminality.

It is only that which will ensure the continued survival of “the one precious right to personal liberty” that the CA believed marked the transformation from a colonial regime to an independent democratic republic.

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Gearing up for space wars

The implications of the American plans for a space weapons corps are still unclear



HARSH V. PANT & KARTIK BOMMAKANTI

The announcement by U.S. President Donald Trump in June about the creation of a “space force” or a sixth branch of the American armed forces has taken many by surprise within and outside the U.S. The imperative by America to build space weapons, which is nothing new, goes back to the Cold War, an example being the Strategic Defense Initiative of the Reagan Administration. The creation of the new force represents an important shift at least at an institutional level. What advantages it will bring to American war-fighting capabilities are still unclear.

Domestic impact

A Republican-controlled Congress explains the push for the creation of a space corps, the purpose being to deny the Russians and the Chinese advantages in space. As Mr. Trump said at the time of the

announcement, the intention is to see that the U.S. establishes and maintains dominance in space. Ironically, the U.S. Air Force – historically a major constituency and votary for space weapons – is not entirely enthusiastic about this new service, which could take resources away from it and the prestige that comes with being the driver of space military operations. Objections have also emerged from within the Administration.

The U.S. Defence Secretary, James Mattis, was emphatic as well in a letter to the Congress last October that adding another military arm would only compound the organisational challenges facing the U.S. armed services. First, it could undercut ongoing missions. Second, it could very well increase budgetary allocations in the future. Third, his objections were clear in that a space corps could undermine American efforts in the domain of joint warfare. A new space force is not merely a brand new service; it potentially increases greater organisational uncertainty within the U.S. military. Notwithstanding these concerns, Washington's headlong rush is the by-product of a strong commitment to preserving American ad-

vantages in space.

Nevertheless, the fundamental difficulty of a space corps is that the physical environment of space is not conducive to the conduct of military operations without incurring serious losses in the form of spacecraft and debris. And despite efforts to make spacecraft more fuel efficient, the energy requirements are enormous. Further, the technical demands of defending assets in space make the possibility of dominance and space as a domain for war-fighting a sort of chimera. Much could change as well on the political front after the Congressional elections in November; the Democrats have a different vision for space. Even if they do not fully object to its establishment, they could impose curbs on its funding if they take control of the American legislature. Beyond domestic politics, structural factors do appear to have weighed in on the Administration, particularly the exponential growth in China's space military capabilities over the last two decades.

China and Russia's responses

While China has reiterated its response to the Trump Administration's announcement with its oft-repeated statement that it opposes



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the weaponisation of space, it knows that it is the prime target of this incipient force. With a range of terrestrial interests in direct conflict with the Americans, Beijing will be in no mood to allow U.S. space dominance. China's space military programme has been dedicated to building “Assassin Mace” technologies (an array of kinetic and non-kinetic means of attack) – capabilities that are geared to help win wars rapidly. Russia for its part has been shriller in its response, making it clear that it will vigorously take on the U.S.. However, given its lack of the resources for competition, it will in all probability, for tactical reasons, align itself with China.

Implications for India

American military goals, which are still undefined in space, could still have consequences for India. While India is officially committed

to PAROS, or the prevention of an arms race in outer space, it is yet to formulate a credible official response to the Trump plan. India has yet to establish a credible space command of its own. And, its inter-services rivalries will have to be resolved about the command and control.

India also has to be concerned about Mr. Trump's move for another reason – China. Beijing's reaction could be much stronger than its seemingly muted official response and it does possess a formidable space military programme that far exceeds current Indian capabilities. For its part, New Delhi would do well to come out with an official white paper on space weapons. The government needs to engage with multiple stakeholders directly about the role space weapons will play in India's grand strategy. More than their war-fighting attributes, space weapons have one principal function – deterrence.

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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.

A forgotten people

The shocking plight of the Rohingya (“In the city of refugees”, June 30, and ‘Sunday Special’ - ‘Hindu Rohingya refugees also wait for a home’, July 1) only highlights the most ironic factor – the complete silence of Aung San Suu Kyi, the torch-bearer of rights. The world cannot forget gestures by leaders such as Canadian Prime Minister Justin Trudeau who reached out to Syrian refugees by accommodating them in Canada and German Chancellor Angela Merkel who opened Germany's doors to refugees.

A. JANULABDEEN,
Gudalur, Theni, Tamil Nadu

A year of GST

The move to observe GST Day, to commemorate the first anniversary of the tax legislation, is strange given the huge disturbance it has caused in the country notwithstanding claims to

the contrary by the government's managers. One year on, the GST is still regarded as draconian, exorbitant and unfriendly by the trading community as well as the general public. The government has not helped matters by making too many tweaks from time to time. Though it is a bit early to fathom the results of the implementation of the GST, one can say that there has been very little change for the common man. When the government claims to be netting crores every month, nothing much has been done on the ground to ameliorate the lot of the poor.

J. ANANTHA PADMANABHAN,
Tiruchi

Dangerous for women

It is strange that when India brags of becoming a major power, it has been ranked among the most dangerous places for women (“India most unsafe for women:

poll”, June 27). Even with better security and awareness, the irony is that the plight of most women in India remains the same. We speak generously of equality and empowerment but they are almost never implemented. It does not matter which political dispensation comes to power, but what really counts is what it does for women's safety and security.

RESHMA SARAH EASO,
Putiyacavu, Alappuzha, Kerala

While political parties are busy trading insults over the Emergency, they seem to have given the report a miss. It is upsetting that India has been bracketed along with Afghanistan and Syria, both war-ravaged countries. The government ought to shore up measures to improve the safety and security of women in the country. Acting on such issues may do more good than subjecting us to meaningless sermons on

events that happened years ago.

VIMAL VARGHESE,
Kochi

Church and abuse

It is disturbing to read about the alleged exploitation of a woman parishioner by five priests of the Malankara Syrian Orthodox Church and a nun alleging rape by a bishop. (“Nun accuses bishop of rape”, July 1). In light of these serious allegations, it is incumbent on both churches to cooperate with the investigative agencies to ensure that the facts and the truth prevail. It would be pertinent to know whether the church authorities themselves approached the investigative agencies on their own. If not, would it not amount to a cover-up?

C.G. KURIAKOSE,
Kothamangalam, Kerala

Heritage tag

Now that iconic structures in Mumbai have been granted

the coveted UNESCO World Heritage tag, it is the duty of the government to protect them from pollution and vandalism. There should be periodical inspections as far their structural stability is concerned as well.

E.S. CHANDRASEKARAN,
Chennai

Hand-washing

Though the life-saving benefits of using soap were first recognised by Ignaz Semmelweis, more than a century-and-a-half later, surveys in U.K. showed that one in four doctors and nurses still did not wash their hands consistently between examining patients. This record was dramatically improved after the ‘Clean Your Hands’ campaign, launched in England and Wales in 2004. The campaign has been critical and medical staff, patients and visitors appreciate the value and the importance of washing one's

hands to prevent the spread of bugs. (‘Life’ page, “Celebrating a forgotten medical genius”, July 1).

H.N. RAMAKRISHNA,
Bengaluru

Sent packing

The exit of Argentina at the pre-quarterfinal stage was not wholly unexpected (‘Sport’ page, ‘Mbappe sends France through and Argentina packing’, July 1). As a team, it played poorly throughout the tournament. Its players are perhaps a tad old to be effective. The only possible sore note is that magician Messi will be missed. New stars are bound to appear on the football horizon just as Pele and Maradona were substituted by Neymar, Ronaldo and Messi. This World Cup may be a chance for talented youngsters to emerge as the new sensations.

V. LAKSHMANAN,
Tirupur, Tamil Nadu

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