



Shot in the arm

The Supreme Court's ruling eases the implementation of the IBC in knotty cases

Last week's Supreme Court judgment upholding the validity of the Insolvency and Bankruptcy Code 2016 (IBC) in its "entirety" could have a major impact on the country's economic landscape. The fledgling IBC has been severely tested in the two years since its enactment, with the Centre being forced to amend a couple of its provisions in order to plug some loopholes that enabled defaulting borrowers to challenge the legislation. Any law of this nature that takes over businesses and assets from defaulters and empowers lenders to change the management is bound to face legal challenges. Borrowers were never going to take the IBC lying down, and that is exactly what happened; over the last two years, they have challenged various aspects of the law in tribunals and courts. In the event, the apex court's stamp of approval on the entire Code is a strong signal to borrowers and banks even as it brings a sense of relief to the Centre, which has been watching one of its better economic initiatives being stifled by vested interests.

One of the major challenges mounted against the IBC was by operational creditors, who are owed money by the company in the normal course of operations for supply of goods and services. In the payment waterfall prescribed under Section 53 of the IBC in the event of liquidation of the company or its sale to another entity, their dues rank below those of financial creditors, workmen and employees. This was challenged by the operational creditors, who wanted equal treatment with financial creditors in the waterfall mechanism. Several landmark cases that were referred to the National Company Law Tribunal under the IBC remain stuck there, including that of the high-profile Essar Steel, as a result of its operational creditors seeking equal treatment. With the Supreme Court now ruling that there are "intelligible differentia" between operational and financial creditors, an avenue that defaulters used to stymie proceedings has been closed. Repayment of financial debt by borrowers infuses capital into the economy as lenders can on-lend the money that has been repaid to other entrepreneurs, thus aiding economic activity, the judges observed. The apex court has also clarified that a mere relationship with an ineligible person cannot disqualify someone from becoming a bidder for a troubled asset. It has to be proved that such a person is "connected" with the business activity of the resolution applicant. The court used strong words: "...[T]he experiment conducted in enacting the Code is proving to be largely successful. The defaulter's paradise is lost." This constitutes a clear signal of its backing for the IBC which, despite all the challenges that it has faced, has been successful in sending a message to recalcitrant defaulters that there can be no more business-as-usual when they default.

Effortless brilliance

Djokovic beats an error-prone Nadal for a record-breaking seventh Australian Open title

Novak Djokovic, at his absolute best, can make even the most fiercely competitive of draws appear enervated. From the start of 2015 to mid-2016, when he won five of the six Grand Slam events, he arguably played at a level unmatched in tennis history. With his merciless demolition of Rafael Nadal in Melbourne on Sunday, which gave the World No. 1 a men's-record seventh Australian Open singles trophy, and his 15th Major overall taking him past American great Pete Sampras, he is on the cusp of repeating that golden run spread across 2015 and 2016. The Serb's transformation, in just over six months, from a physically compromised and mentally withdrawn state to having a shot at sporting immortality, has been staggering. Against Nadal, he did not quite have to hit his peak; the World No.2, despite having looked the better player leading up to the final, never truly arrived, with his rhythm, timing and tactics all over the place. The 17-time Grand Slam champion seemed smitten by anxiety, a far cry from the 2018 Wimbledon semifinal when he fearlessly matched Djokovic shot for shot over five epic sets. But that is probably what the mask of invincibility does to opponents, something that Djokovic wears so effortlessly.

To be sure, Djokovic had lost in each of the three tournaments before the Australian Open – to rising youngsters in Karen Khachanov and Alexander Zverev, and the gritty Roberto Bautista Agut – suggesting a few cracks. But the manner of victory over Nadal, where he conceded a mere eight games and did not drop a set, a first in 25 finals for the Spaniard, proved that the 31-year-old had lost none of his astonishing powers of recovery. Nadal was on the path to recovery as well, playing only his first tournament since his injury-forced retirement in the U.S. Open semifinal last September. Following Roger Federer's loss to Stefanos Tsitsipas, the 20-year-old sensation from Greece, the tournament seemed open to further upsets, but the business end demonstrated that the elite can never be written off. As Nadal said after dismantling Tsitsipas in the semifinal, what fans can instead look forward to is an irresistible battle of the generations. On the women's side, this clash has seemed heightened in recent years, and Naomi Osaka, with her gallant three-set win over Petra Kvitová in the final, firmly established herself as the next big thing. For the 21-year-old to back up her maiden title at the U.S. Open with a win in the very next slam is character-revealing. She is now the World No.1 and also the first Asian to get there. She has the temperament and the poise to go much further.

A chessboard called Uttar Pradesh

It's do or die for all three in U.P. — the BJP and its resurgent rivals, the SP-BSP combine and the Congress



VIDYA SUBRAHMANIAM

Priyanka Gandhi Vadra's bombshell induction into the Congress and her being given the charge of East Uttar Pradesh just ahead of the general election did the one thing previously unimaginable. It caused a little tsunami in the TV studios habitually glued to the movements of Prime Minister Narendra Modi. India Today TV set its fetching photo feature on Ms. Vadra to the 1980's Bollywood hit song, "Bijli girane mei hun aayee (I've come like a thunderbolt)." Anchors across channels debated the 'Priyanka game-changer.'

A fusion and shift

Yet, for all the hype around Ms. Vadra's wild card entry, it is not the first big thing to happen this election season. That credit goes to the Samajwadi Party (SP) and the Bahujan Samaj Party (BSP) which closed a breathtaking deal just weeks earlier. The alliance was between two subaltern forces, each with a committed vote base, the fusion of which was capable of effecting a tectonic shift in the power politics of U.P. The two had been bitter enemies before but have buried the hatchet realising the match-winning potential of their combined strength. The story of the SP-BSP threatened to be the story of the fall of the Bharatiya Janata Party (BJP) in U.P. and it triggered a furious rejig of calculations: the alliance did look poised

to overtake the BJP. But then came the Modi Government's announcement of a 10% quota in education and jobs for the general category. Into this cocktail has now been added the Priyanka Vadra factor, the consequences of which are as yet unclear, aside from its electrifying effect on the morale of the Congress cadre. The Congress, which had been left out of the SP-BSP deal, has since acquired a swagger which it is showing off for all to see.

Admittedly, there will be more twists with the near certainty of schemes tailored for U.P. in the Union Budget. The frantic one-upmanship between the parties in U.P. owes itself to the State's fabled role in deciding who wins and who sinks at the national level. Although at least three governments, led each by the Congress and two versions of the United Front, in 1991 and 1996-1998, have made it to Delhi bypassing U.P., the belief remains that the way to the national capital is via Lucknow. The reason for this is the BJP's critical dependence on U.P. Whether in 1996, when it emerged as the largest single party and briefly held power for 13 days, or in 1998, 1999 and 2014, when it formed full-fledged governments at the Centre, U.P. has been central to the party's successes.

State's poll arithmetic

Consider U.P.'s role in making BJP governments at the Centre. In 1996, 52 of the party's total seats of 161 came from U.P. In 1998, 57 out of 182. In 1999, 29 out of 182. And in 2014, exceeding all expectations, 71 out of 282. In sum, no U.P., no government for the BJP. So if the BJP must win all it can in U.P., its rivals in the State, whether the



SP-BSP alliance or the Congress, must ensure precisely the opposite result because the stakes are equally high for them with three crucial objectives to be met: dislodge the Modi government, ensure their own survival in the State, and have a shot at forming the next government.

With equations changing constantly and ever new inputs causing the poll arithmetic to undergo rewrites, is it possible at all to guess who will stand where in U.P. when the last vote is counted? On paper, the BJP is unassailable. But the U.P. of today is not the U.P. of 2014 or even 2017. Demonetisation, which powered the BJP's 2017 victory, has recoiled on the poor. State Chief Minister Yogi Adityanath's cow-centric policies have deepened the woes of farmers already in distress even as the targeted killings of Muslims, sizeable at 20% of the population, have left the community feeling under siege.

So even in a static political situation, the BJP would have found it hard to repeat its 2014 performance. In 2014 as well as in 2017, the BJP beat its opponents in every department – in caste arithmetic, in booth management and in being visible 24 into 7 via a captive media. Mr. Modi's charisma, the

party's deep coffers and the old chestnut of communal polarisation did the rest. In 2019, the rivals are a savvier lot, with their own caste arithmetic and PR tricks.

It is a given that the Modi-Shah pair will not stand by while their opponents strategise to defeat them. Reports suggest that the 10% general quota has enthused the alienated upper castes. Whether this group will be diverted in part to the Congress because of Ms. Vadra remains to be seen but her entry undoubtedly poses a threat to this previously solid BJP vote bank. A resurgent Congress can also chip away at the SP-BSP's Muslim support. The biggest plus point for the Congress is the goodwill it has always enjoyed in U.P. On the other hand, it has no core constituency that can act as a pivot to attract other castes and communities.

A deeper reading

The SP-BSP alliance was not meant to happen, and if it has happened, it is only because the situation was dire for both of them. The partners had no future individually. The BJP's vice-like hold on the State and its resources meant that the respective cadre of the SP and the BSP had no hope for the foreseeable future. No party can indefinitely retain its rank and file without the carrot of an electoral triumph and a realistic chance at the loaves and fishes of office. The arithmetic of togetherness, ignored earlier, could no longer be overlooked. After the failure of their last unity experiment in 1993, the SP and the BSP had resolutely resisted teaming up, largely due to deep personal animosities. A change of guard in the SP in the form of Akhilesh Yadav did a lot to ease things. But

it is arithmetic that clinched the deal. Together the SP and the BSP are match winners and have been so in every election since 1993 when they first beat the BJP. Indeed, statistics show that together they will have likely stopped the BJP's conquest of Delhi, whether in 1998, 1999, or even in 2014. In 1998, the BJP's vote share from U.P. was 36.49%. In the same election, the SP-BSP had a combined vote of 49.60%. In 1999, the partners had 46% to the BJP's 27.64%. And in 2014, they lagged behind but only by a few decimal points.

Today, the two parties look formidable. They have got the Rashtriya Lok Dal on board, and are looking to add smaller Other Backward Classes (OBC)-based parties. Realising that the OBC castes are vital for victory, the BJP fused them together brilliantly in 2014. This time the advantage of social engineering could be with the SP-BSP alliance. If the combine's vote share crosses the one-third mark, it could even benefit from the three-way split.

If the alliance brings itself to do one more thing, it could become unbeatable. And that is to stop chasing the chimera of upper caste votes and pitch itself as a protector of OBCs and reservation, as against the BJP which has returned to its upper caste roots with the 10% general quota. Will they do it?

At the time of writing, Rahul Gandhi had promised a minimum income for the poor. How the BJP tops that will be known on February 1.

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Capable even if disabled

An institutional display of pure and simple discrimination dressed up as legal reasoning is unacceptable



RAHUL BAJAJ

One of the darkest moments in the American disability rights movement was the American Supreme Court's decision, in 1927, upholding the forced sterilisation of a mentally infirm woman, reasoning that it helped get rid of those who would sap the state of its strength by swamping it with incompetence. Similarly, in India, the Supreme Court's ruling last Tuesday, in *V. Surendra Mohan v. Union of India*, has to be regarded as one of the darkest in India's disability rights movement.

The Court had to rule on the legality of the Tamil Nadu government's policy of reserving the post of civil judge only for people whose percentage of blindness does not exceed 40-50%, resulting in the exclusion of the applicant who was 70% blind. It held that the government's decision was rational and reasonable. It ruled that a judicial officer has to possess a reasonable amount of sight and hearing to discharge her functions. It accepted the claim that impaired vision makes it impossible to perform the functions required of judicial officers, such as assessing the demeanour of wit-

nesses and reading and analysing evidence. It also accepted that asking a blind judicial officer to perform such administrative functions as recording dying declarations and conducting inquiries can result in avoidable complications. The judgment is problematic for four key reasons.

Examples of success

First, the view that a totally blind person cannot thrive as a judge is belied by several examples of successful judges who are blind. One is former South African Constitutional Court judge Zak Yacoob, who has repudiated the notion that one needs to be sighted to assess a witness's demeanour as being nonsensical, to U.S. Court of Appeals DC Circuit judge David S. Tatel, who thinks that it is neither fair nor accurate to impose low expectations on what blind lawyers can do. There is also former San Diego County Court judge David Szumowski, who has described the view that a blind person lacks the wherewithal to become a judge as an unfair characterisation, to Yousaf Saleem who, last year, became Pakistan's first blind civil judge.

Second, how, some contend, can a blind person be reasonably expected to thrive as a judge without being excessively dependent and inefficient? However, as the Supreme Court itself noted in 2017, "a lawyer can be just as effective in a wheelchair, as long as she



has access to the courtroom and the legal library, as well as to whatever other places and material or equipment that are necessary for her to do her job well."

Those voicing such a statement of cynicism might find it equally hard to imagine how a blind person can write an article for *The Hindu*, as this writer is doing, or study computer science, as many blind Indians have done or be a successful civil servant, as Beno Zephine N.L. is.

Third, the Court's unreasoned assertion is an outcome of their ignorance about the capabilities of the disabled. However, as Laura Wolk notes, ignorance simply cannot be an excuse in 2019. It is simply unacceptable to condemn disabled legal professionals, possessing the intellectual wherewithal to be a judge, to the status of outcasts only because the judges delivering the judgment in this case appear simply not to have bothered to notice the competence of the millions of disabled

people who inhabit this world.

As Judge Szumowski asks Indian judges, "if you went blind while on the bench, and were able to efficiently discharge your responsibility before this, how would you feel if told that you can no longer continue as a judge, even if you are able to perform your functions with some amount of retraining and adaptive tech?"

Reasonable accommodations

Fourth, as to obviating avoidable complications, the reasonable accommodations required by a blind judge may be considered irksome. However, it bears noting that "there is a distinct exhortatory dimension to be recognised in deciding whether an adjustment to assist a disabled person to overcome the disadvantage that she or he has in comparison to an able-bodied person is reasonable." It does not lie in our mouth to say that we are truly committed to ensuring that the constitutional promise of equality is fully realised, if we lack the ability to even pay the price of making reasonable accommodations.

This is not just of academic interest for me. On my path to becoming a blind postgraduate law student at the University of Oxford as a Rhodes Scholar, I have often been compelled to engage with the cynicism of those who thought that something was simply too difficult and messy for me to do as a blind person. And perhaps some

things were, and continue to be, comparatively more difficult. But those experiences also helped me cultivate the ability to assert myself and to find ways of thriving in a world not designed for me – qualities that many able-bodied persons do not possess to the same degree and qualities which were recently recognised by a sitting Supreme Court judge in open court.

When my Supreme Court tells me that my blindness makes me intrinsically incapable of becoming a judicial officer, when it arrogates to itself the power to stamp a badge of incompetence on thousands like me about whom it knows nothing, its declaration cuts to the core of my confidence about the fairness and robustness of our judicial system. Indeed, it is telling that even the applicant in this case took it as a given that those who are completely blind for all intents and purposes, like me, cannot become a judge; it only argued that a partially blind person can become a judge. I have never had any interest in becoming part of the judiciary. However, I earnestly believe that how we choose to respond to this institutional display of pure and simple discrimination dressed up as legal reasoning will be reflective of what kind of a society we hope to be.

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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.

The next mandate

The writer, a former Union Minister, needs to look at his party's own history of being in cahoots with the mob in stifling the freedom of expression (Editorial page, "The essence of the next mandate", January 28). Who can forget how the party aided forces that were against *The Satanic Verses*? The present dispensation may be synonymous with a flaring up of communal tensions, but the fact is the Opposition too does not have constitutional values in mind. To gain the confidence of independent voters who do not have any political predisposition, the Opposition needs to be more vocal about acknowledging its fatal flaws and make credible promises that it will not pursue such lines if it comes to power.

M. NIKHILESH, Hyderabad

■ The writer appears to be living in an ivory tower as he is totally disconnected from ground realities. The so-called 'mahagathabandhan' is non-existent as every one of its constituents is following a different trajectory. Voters face a catch-22 situation and are befuddled. The BJP is bound to have an easy run in the general election.

DEEPAK SINGHAL, Noida

■ One-sided political commentaries offer little in terms of new insights about election-related themes except the weaving of false narratives tailored to bolster the prospects of a political party. It was amusing to read the ponderous and poetic evocations about the perceived threats to democracy. The use of high-sounding metaphorical evocations not only fail to square up with the current political realities but also smack of palpable

opportunism. In fact, the greatest threat to democracy seems to arise from the intolerance of the Congress which has been behaving as if it has a personal score to settle with the Prime Minister. Unfortunately for the Congress, smear campaigns and clever propaganda belong to the pre-Internet era.

V.N. MUKUNDARAJAN, Thiruvananthapuram

■ Since 2014, we have seen the preaching of a majoritarian agenda for electoral gains, hits to our secular ethos and pluralistic fabric, and a rise in social and economic disparities. These are only a few examples. I hope 'the soul of a suppressed nation' does assert its authority.

KSHTIJI MANI TRIPATHI, Lucknow

Water crisis

The oft-mentioned prediction, that the next

world war will be fought over water, appears to be coming true. The decline in monsoon rain is bound to affect India, more so in the drought-prone areas (Editorial page, "India stares at water scarcity", January 23). The disproportional transfer of water between rural-urban areas will further worsen the already ruined agrarian sector. Farmers are already burdened with debt traps and price volatility and if the drought situation worsens, they will face even greater danger. Cutting across party lines, politicians must constitute a commission to study water scarcity and look for practical solutions.

SANJITH M. NEYOR, Kottayam, Kerala

At Melbourne

What promised to be a thriller of a men's final in the Australian Open, turned out to be a lopsided one. But, it was one of the best ever

performances by world No.1 Novak Djokovic, as he demolished Rafael Nadal ('Sport' page, "Djokovic makes it seven with a magnificent display", January 28). Djokovic's win, yet again, reopens the debate over who is the greatest male tennis player of all time. However, the trio, of Roger Federer, Nadal and Djokovic, have crafted a golden era in men's tennis.

R. SIVAKUMAR, Chennai

Light pollution

The article "Night shifts may cause DNA damage" ('Life' page, January 28) was interesting. In this connection, I would like to

CORRECTIONS & CLARIFICATIONS:

A sentence in the report headlined "States put on high alert as swine flu cases spike across the country" (Jan. 23, 2019) erroneously said that swine flu cases most commonly occurred in people with direct exposure to pigs (e.g., children near pigs at a fair or workers in the swine industry). The outbreak is not caused by pigs.

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