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Welcome clarity

The Supreme Court's ruling in the Essar Steel case has restored order to the IBC process

By ruling in the Essar Steel case that the Committee of Creditors (CoC) has the discretion to decide on the distribution of proceeds, the Supreme Court has brought huge relief to banks. Importantly, the SC has set aside the NCLAT order in this case that had prescribed a sharing arrangement treating all classes of creditors — secured, unsecured financial creditors and operational creditors — identically. The NCLAT order had worked out a blanket 60 per cent share of claims for all creditors, threatening the basic tenets of commercial law that accords priority to secured creditors. The SC has instead ordered that Arcelor Mittal's ₹42,000-crore offer be distributed according to the resolution plan approved by the CoC in October last year, implying 92 per cent of secured financial creditors' claims being settled — a big win for lenders. The SC ruling has also importantly put to rest ambiguity over several aspects of the IBC, setting a key precedent for future cases.

The manner in which funds are distributed among creditors has been a bone of contention in many cases under the IBC. Striking down the simplistic approach of the NCLAT,the SC has helpfully clarified that "the equality principle cannot be stretched to treating unequals equally". A similar observation was made by the SC in the landmark Swiss Ribbons case, where it noted a clear difference between financial and operational creditors. The other key issue raised in the case was whether the CoC is at all empowered to distribute proceeds amongst various creditors. The SC has put to rest this argument by ruling that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the CoC. The SC has also shed light on whether the adjudicating authority can question the resolution plan approved by the CoC. The SC in a nutshell has ruled that the adjudicating authority has to satisfy itself on whether the approved resolution plan meets the requirement laid down under the IBCand it cannot turn down the plan for any other reason. By upholding the collective decision of the CoC as paramount, the SC has to some extent addressed one of the key reasons for long-drawn litigations under the IBC.

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That said, whether the interests of operational creditors will be safeguarded needs to be seen. While the SC re-iterated that the CoC must balance the interests of all stakeholders, including operational creditors, it also ruled that the CoC does not act in a fiduciary capacity to any group of creditors. This still leaves the position of operational creditors unclear. The fact that the case dragged on for over 800 days highlights excessive delays under the IBC. The SC move of striking down the word 'mandatorily' in the 330-day timeline laid down in the August amendment could hinder time-bound resolution.

Some questions on the Ayodhya verdict

The apex court judgment, appreciative of 'faith', goes beyond the domain of law. It falls short in creating a sense of 'closure'

TANWEER FAZAL

Nearly 28 years after the *kar sevaks* pulled down the Babri mosque, a Constitutional Bench of the apex court obliterated it as a legal entity attached to the land on which it stood. The unusual turn of events prior to the verdict left little room for surprise. The SC worked through sleepless nights to conclude the proceedings and pronounce the judgment, keeping on hold other exigent matters — including the abrogation of Article 370 and the *habeas corpus* petitions challenging detention of political leaders.

In sharp contrast with this urgency, the criminal cases against the perpetrators of the demolition is lost in the labyrinth of lower courts. Indeed, the accused boasted that the judgment vindicated their criminal acts. Days and months prior to the final order, religious leaders and sundry intellectuals sought to impress upon Muslims to surrender their claim. Considering the antiquity of the dispute, their guest appearance in the final moment alarmed many. The judgment ultimately hands over the disputed land to the reigning deity, Ram Lalla Virajman through his next 'human' friend. It thus gives rest to a dispute whose recorded history dates back to more than 150 years.

For liberal consciousness, disturbed by the hostile posturing of parties in dispute, the pronouncement of this judgment amounted to a 'closure', regardless of its disturbingly ideological nature. What mattered ultimately was comfort, peace and tranquillity, and the judgment—by its so called 'balancing act', it is argued — holds immense promise.

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Sadly, this whole argument rests on the goodwill or helplessness of the minorities caught in an increasingly majoritarian polity. Moreover, there is a childlike naivety—that the end of the Ayodhya dispute would bury the *raison d'etre* of Hindutva politics.

This pragmatics is oddly mixed up with the mobilisation of modern, legal rationality — the supremacy of secular law, analysis of evidence as against faith, the marshalling of case law and incontrovertible legal principles. Justice here receives short shrift, or is assumed to be the end outcome of judicial scientism. It thus fails to answer certain questions: if 1949 marked the forceful encroachment of the sanctum sanctorum by the deity, how could the deity then become the rightful owner?

Worrisome silence

While the judgment assertively claims to have kept individual faith aside in adjudications on land dispute, why did it ultimately cede to 'undisputed faith' to determine adverse possession, and not land and revenue records? There are far too many questions that the judgment leaves unanswered.

The response from Muslim denominational organisations is guarded. It ranges from immediate acceptance to muted disagreement to appeals to "move on". There are various social media postings that have appealed to the Sunni Waqf Board to decline the compensatory gift of five acres of land. Open defiance and outright denunciation is not yet evident; or is it too early to conclude?

Nevertheless, a state of shock and incredulity runs deep; the silence and stillness is far more worrisome. Is it going to leave a deep scar on the psyche of young and old, and impact the collective conscience of being an Indian Muslim? The demolition of the mosque in 1992 had indeed left its impact on generations to come, as the Nellie (1983), Gujarat (2002) and Bhagalpur (1989) riots did. Living in the New India, choices for Muslims and the minorities in general are severely constrained.

Triumphalism prevails The verdict is a boost for the majority rather than the minority community AFP

If this judgment brings a 'closure', there are other indignities in store — the National Register of Citizens on an pan-India plane, the Citizenship Amendment Bill that exclusively targets Muslim immigrants and so on. Is there an escape?

Maintaining status quo

There is more than a century-old case law on competing claims of communities over places of religious worships, and the judgment draws strength from many of them. The colonial jurisprudence for instance, wary of opening a Pandora's Box of ceaseless conflicts, was inclined towards maintaining status quo. All through the British period, the courts seemed to take the least precarious course, the status quo, for the maintenance of public order. And this approach informed its handling of the Babri Masjid-Ram Janambhoomi dispute too.

In 1855, after widespread rioting over the possession of the mosque, a mutually arrived-at resolution was its bifurcation into two parts, inner and outer, one to be accessed by Muslims and the other by the Hindus. In 1885, when Baba Raghubar Das of the Nirmohi Akhara petitioned for permission to build a temple of Ram Lalla on the *Chabutara*, the court of the sub-judge refused to disturb the status quo on grounds that such permission would incite violence between communities.

Appeals against this order in the courts of the district judge and the judicial commissioner too, fell. But the policy of non-interference and status quo shifted significantly post-Independence. The court and the administration were only too eager to intervene, their intervention explicitly favouring the majority party.

On the night of December 23, 1949, a Hindu mob managed to enter the inner courtyard of the Babri mosque and install an idol of Ram Lalla right below the central dome. Since then, the inner premises of the mosque, so far under Muslim use, became inaccessible to them. The persistent Muslim demand for the removal of the idol was not heeded to by the local authorities who frequently took the plea that this would incite Hindu sentiments.

A new status quo allowed rituals to continue with access provided to Hindu priests. This continued until 1986, when an order from the district judge of Faizabad allowed the Babri Masjid to be opened to the general Hindus. The opening of the locks unleashed a series of events involving massive campaigns and counter mobilisations, culminating ultimately in the demolition of the mosque in December 1992. A makeshift temple on the site was the new status quo, where *darshan* was allowed but not *namaz*.

Every intervention from 1949 onwards prepared the grounds for the eviction of the mosque, and institution of the temple, a feat eventually achieved through the judicial pronouncement on November 9 2019.

A judgment, like any official decree, leaves a variegated impact, speaks to different audiences. In a nutshell, the end result of the justice delivered is that triumphalism prevailed. For those on the receiving end, there is a coded message. The sooner they absorb it, the better.

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Trump and his party of pollution

The dangers of particulate matter in the air, despite being literally visible, have failed to evoke a response from US lawmakers

PAUL KRUGMAN

Given what we've seen in the impeachment hearings so far, there is literally no crime, no abuse of power, that would induce Republicans to turn on President Donald Trump. So if you're waiting for some dramatic political turn, don't hold your breath.

On second thought, however, maybe you should hold your breath. For air quality has deteriorated significantly over the past few years — a deterioration that has already cost thousands of American lives. And if Trump remains in power, the air will get much worse, and the death toll rise dramatically, in the years ahead.

The story so far: When I talk about air pollution, I don't mean the greenhouse gases that are driving climate change, which pose a long-term existential threat. I'm talking instead about pollutants that have a much more immediate effect, especially "fine particulate matter," small particles that make the air hazy and can penetrate deep into the respiratory tract. The health hazards of these particles have been documented by many studies.

The good news until a few years ago was that thanks to environmental regulation the concentration of fine particulates was in fairly rapid decline. The bad news is that since 2016, this kind of pollution has been on the rise again, reversing around a fifth of the gains since 2009.

Fatal increase

A study documenting this reversal suggests multiple causes, including wildfires (themselves caused in part by climate change), increased driving and reduced enforcement. The study also finds, using well-established results on the health effects of pollution, that even this seemingly small rise in particulates led to almost 10,000 extra deaths last year.

To put this number in context, it may be helpful to remember that Trump began his presidency by talking about "American carnage," portraying a nation awash in violent crime. In reality, crime was and is near historic lows. To the extent that anything was behind his rant, it lay in a modest (and temporary) uptick in homicides from around 14,000 in 2014 to 17,000 in 2016.

The point is that the Trump-era death toll from worsening air is already several times as large as the "carnage" Trump decried. It seems crass to point this out, but the economic cost of rising pollution is also large; the study puts it at $89 billion a year. This is a pretty big number, even in an economy as large as America's, and it means that economic growth under Trump, properly measured, has been significantly slower than standard numbers suggest.

Dirty air Particulates pose health risks

And things are poised to get much worse. The Trump administration is working on new rules that would effectively prevent the Environmental Protection Agency from making use of much of the scientific evidence on adverse health effects of pollution. This would cripple environmental regulation, almost surely leading to sharply worsening air and water quality over time.

We don't know exactly how this will play out, but it seems safe to say that if Trump stays in office, a lot more Americans will die as a result of his anti-environmental policies than the total number who are murdered, let alone murdered by the immigrants Trump loves to portray as a menacing, dark-skinned horde.

Environmental concern

Why is this happening? As many observers have pointed out, failing to act on climate change — although it's an indefensible crime against humanity — is also in some ways understandable. Greenhouse gas emissions are invisible, and the harm they do is global and very long term, making denialism relatively easy.

Particulates, however, are visible, and the harm they do is both relatively localised and fairly quick. So you might have thought that the fight against dirty air would have widespread, bipartisan support. Indeed, modern environmental protection began under none other than Richard Nixon.

And Republicans continued to show at least some concern for the environment even after the party began to take a hard Right turn. President Ronald Reagan signed a treaty to protect the ozone layer. The threat of acid rain was contained via a program enacted by President George HW Bush.

But that was a long time ago. Today's Republican Party isn't just a party that has embraced crazy conspiracy theories about global warming. It has also become the party of pollution.

Why? Follow the money. There's huge variation among industries in how much environmental damage they do per dollar of production. And the super-polluting industries have basically put all their chips on the Republicans. In 2016, for example, coal mining gave 97 per cent of its political contributions to Republican candidates and causes. And polluters are getting what they paid for.

This, by the way, is one reason I and others find it so mind-boggling when people like Joe Biden say that everything will be fine once Trump is gone. If Trump doesn't succeed in destroying our democracy (a big if), his most damaging legacy will be the vast environmental destruction he leaves behind. And Trump's pro-pollution stance isn't an aberration. In this, he is very much a man of his party. NYT

SUKIYAKI

MANJULA PADMANABHAN

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.

Investment climate

Apropos the editorial 'India against investors?' (November 15). Though India went up the ladder in the global ease of doing business index, the ground reality on the plight of investors in India is regrettable. Airtel and Vodafone claimed a combined humongous loss of ₹73,000 crore due to AGR and high spectrum costs. Foreign companies are in the verge of leaving India facing continuous, huge loss and several other constraints. Though India remains firm on its 'Make in India' campaign, it is all talk. An effort of both the State and Central governments to bring in an investor-friendly climate will lure investors.

NR Nagarajan
Sivakasi

Market sentiment

'Retail investors hurt in DHFL free-for-all' (November 15) has provided insights on the ineffective and snail-paced momentum of the DHFL-NCD imbroglio. Earlier, investment in bonds and bank deposits contributed towards safe, steady and regular income for small investors. The falling interest rates in bond markets diverted investor attention towards equity markets directly and through mutual funds. However, small investors face more risk due to regular volatility in the equity markets. To facilitate availability of alternative sources of funds through low-priced NCDs and bonds, the rules were relaxed to give corporates access to capital markets. However, investor sentiment in the bond market may not improve in the absence of effective compliance standards by issuers .

Sitaram Popuri
Bengaluru

In-house ratings

This refers to the report 'Moody's cuts growth forecast to 5.6% due to 'longer slowdown' (November 15). Last week's quick response from the Finance Ministry to another aspect of the Moody's report, though likely to be dubbed "damage control", has to be welcomed as it goes beyond defence and carries facts and figures supporting long-term optimism.

But international stakeholders, who should be investing in India, depend more on the language with phonetics like Baa2 or BBB-. Therefore, India should prioritise creation of a trustworthy rating agency of international repute headquartered in the country.

This proposal should be considered given that the rating agencies with 'brand names' like Moody's, Standard & Poor's and Fitch look elsewhere for guidance and are ill-equipped to go deeper into the "SWOT" inherent in emerging economies like India. They are, bluntly put, extended arms of external vested interests.

It is time we have a professional 'Made in India' rating agency of international repute which will factor in the country's hidden domestic resources, relatively lower consumption needs and undertake specific research on the country's economic strength, as was done by Abhijith Banerjee and associates in the field of poverty.

MG Warrier
Mumbai

Small borrowers

This refers to 'MFIN aims to set up steering committee to administer 'Code for Responsible Lending' (November 15). While the self-regulating Code for Responsible Lending (CRL) covers the entire micro-credit industry, the move to set up a steering committee to oversee the smooth administration of the code is imperative.

At a time when multiple lenders like banks, NBFC-MFIs, small finance banks, etc., are engaged in extending micro-credit to borrowers, the chances of both over-borrowing and excessive supply of credit are possible. In terms of the code, allowing only three lenders to fund a single borrower and capping the loan at ₹1 lakh per borrower is stipulated to prevent the poor borrowers from over-leveraging and also to ensure the quality of the loan asset.

While the micro-credit beneficiaries hail from the poor strata of the society and utilise the loan for self-employment, many times they borrow from informal moneylenders to pay back their outstanding debts to the financial institutions. The moneylenders still hold a key position, lending at exorbitant rates of interest and, therefore, it is essential to give a push to micro-finance institutions to enhance the flow of credit at reasonable rates.

VSK Pillai
Kottayam

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