



I suspect the truth is that we are waiting, all of us, against insurmountable odds, for something extraordinary to happen to us

Khaled Hosseini



INDIAN EXPRESS IS NOT AN INDUSTRY. IT IS A MISSION.

— Rammath Goenka

## CENTRE'S FREEBIE IS SOCIAL WELFARE FOR THE STATES

The raging debate over freebie versus welfare schemes has gone beyond an exasperating squabble over semantics. The 15th Finance Commission, tasked to recommend measures to fortify cooperative federalism and enhance the quality of public spending, used the term 'populist measure'. The new expression 'revdi culture', which likened the popular candy to freebies doled out by political parties in lieu of votes, has given fresh ammo to several Opposition-ruled states. They have unequivocally asserted that New Delhi is trespassing into their territorial freedom. Tamil Nadu Finance Minister Palanivel Thiagarajan, who strode into the debate with clinical ease, reminded BJP that a social welfare scheme for women in TN a few years ago that provided half the cost of scooter was flagged off by none other than the PM, when its alliance partner AIADMK was in power. His riposte created a flutter and pushed the Centre into a hushed corner. The apex court's entry into the space mostly carved out from the unconstitutional righteousness and its tenacity to set up a committee to separate the chaff have given the debate a lot more urgency. Several Opposition parties have impleaded themselves with intervention applications.

With the general elections around the corner, the Centre's mission to end the freebie culture is nothing less than walking on the razor's edge. The Opposition retort is high-pitched: the bulk of the Centre's welfare measures like cutting corporate taxes and waiver of bank loans have benefited the large corporate houses and ultra-rich people. As the country stares at rising inflation, it's not wrong to assume that New Delhi has rightly gauged its potential to sway voters.

Nobody can fault a government for splurging on welfare schemes when it runs a surplus budget. Of course, when the exchequer runs dry, doling out irrational freebies is hardly an option. But can one call all government facilities such as free education and healthcare freebies? Ensuring social justice is the primary job of a government, and welfare schemes indisputably prop up weaker sections. Reminding state governments of their debt levels and the need to cap expenditure is vital. But it may be imprudent to tell them how to spend their money. Instead, a debate on the efficacy and reach of the schemes will help.

## RISE IN CAR AND HOME SALES PROMISING

Consumer spending on home-buying and passenger cars is on the uptick, the latest segment data seems to indicate. Despite the marginal rise in prices and the firming up of mortgage rates, housing sales in the top seven metros are all set to surpass annual sales of 2.62 lakh units achieved in the pre-pandemic year. Property sale registrations in Mumbai, Pune and the rest of Maharashtra showed that in the first four months of the current fiscal, more than 8 lakh units changed hands. This is still short of the 10 lakh units registered in the first four months of 2019-20, but the upward trend is visible. Passenger car sales in July showed an increase of 16% at 3.42 lakh units compared to just 2.95 lakh cars dispatched to dealerships in July 2021. Even sequentially, July sales this year were higher than June when 3.21 lakh cars were sold.

What is significant is that the luxury market seems to be opening up after the Covid freeze. Property consultant Anarock showed over 25,000 luxury flats priced above ₹1.5 crore sold in the first six months of this calendar year, surpassing sales in the last three years in this niche segment. Luxury buying is usually not a necessity, and when consumer sentiment rebounds, this segment is the hardest hit. In calendar 2020, luxury apartment sales plummeted to 8,470 units compared to 17,740 units in 2019.

The housing and auto industry were among the hardest hit during the pandemic, and it is important these sectors are now registering robust sales. Home-buying and car sales are bell weather indices for consumer sentiment, and market watchers are hoping the post-pandemic turnaround will also continue into the festival season. Soaring demand over Dussehra and Diwali driven by family buying will provide much-needed economic impetus. The only concern is some businesses often kill the proverbial Golden Goose by being greedy and hiking prices. Government and industry associations should hold the price line earnestly and ensure the consumer returns to the marketplace.

With the Chinese entrenching themselves firmly in Myanmar's economy and defence, Indian worries over the security implications for its sensitive Northeast will grow

## MYANMAR ISSUE BAD NEWS FOR ACT EAST THRUST

SUBIR BHAUMIK



Ex-BBC correspondent, worked in Myanmar and authored books on regional conflicts

If Sri Lanka's economic collapse was bad news for India, Myanmar's escalating conflict and economic downslide would prove to be worse. Since the February 2021 military takeover and the brutal suppression of what initially was a peaceful protest movement for democracy, armed resistance groups have proliferated in the ethnic Bamar (Burman) regions seen as the heartland of Myanmar. These groups have linked up for tactical reasons with the long-standing ethnic rebel movements like those of the Kachins, Karens and the Shans, the Was and the Kokangs, stretching the Burmese army Tatmadaw more than ever in the recent past.

With the loosely grouped People's Defense Forces organising regular attacks on the Tatmadaw in the Sagaing region bordering India's Northeast, the states of Manipur and Mizoram are faced with a rising flow of refugees.

More than 30,000 refugees from Myanmar are already believed to have entered these two states. They include at least 50 lawmakers of the Myanmar parliament, mostly belonging to Aung San Suu Kyi's National League for Democracy (NLD) which had swept the 2019 national elections and was set to form a government a second time.

The PDF insurgents owe allegiance to the National Unity Government (NUG), which claims to be the "real government of the Myanmar people".

Since the NUG has not only representatives from leading parties like NLD but also from powerful civil society groups and ethnic organisations, it has come to be seen as a broad-based national movement for change, with most looking up to it for leadership as Suu Kyi is in prison and her jail term has been extended by six years.

While discussing the NUG's agenda, its foreign minister Zin Mar Aung recently told this writer that "our struggle now is to oust the military from politics and take the country towards democracy". Madame Aung has been strongly lobbying with Western democracies as well as India and ASEAN to facilitate a dialogue to restore the parliament and send the army back to the barracks. Since there has been little progress in that direction and the ASEAN's Five Point Consensus has failed to achieve a breakthrough, young Burmese have taken to arms in a desperate effort to fight the military and force it out of power. The Tatmadaw is badly stretched, and morale in the lower echelons is dropping, as evident from rising defections. However, it still has enough firepower to pound the PDF and other ethnic rebel armies. With strong support from China and Russia, the military junta feels it can just about hang on.

Myanmar's economy is on the verge of collapse, though the military junta is not forthcoming with data about foreign

exchange reserves. But panic has gripped Myanmar over the growing likelihood of a Sri Lanka-type economic collapse after the country's central bank called on all citizens this month to convert their foreign currency holdings and remittances received from abroad into the local currency kyat. Myanmar's foreign reserves are believed to have dwindled sharply, and foreign debt has escalated as Western sanctions following the Feb 2021 coup and the raging Covid pandemic have adversely impacted the nation's economy.

But the country's military rulers continue to sign up for more and more Chinese-funded infrastructure projects and allow Chinese companies to take over mines and other profitable businesses. That is the hope that the Chinese will bail them out in a Sri Lanka or Pakistan-type crisis. Burmese fighters opposing the military rule are increasingly targeting Chinese

business interests. Even other foreign investors are pulling out of the country. For India, the deteriorating situation in Myanmar has three immediate impacts.

One, Indian connectivity projects like the Kaladan Multi-Modal Transport Corridor are not likely to be completed anytime soon. Already behind schedule, the escalating conflict across the country has made it impossible for Delhi to complete these projects. India's much-vaunted 'Act East' policy cannot be taken forward without these projects unless the situation stabilises in Myanmar. The country's return to democracy in the last decade has raised hopes for India to use it as the land bridge to the rest of Southeast Asia, but the 2021 coup and the severe breakdown of law and order have torpedoed that hope. 'Act East' through the Northeast will never be possible without a peaceful Myanmar.

Second, the escalating refugee problem will have an adverse impact on the Northeastern states, taxing their limited resources. It will also complicate bilateral relations as PDF and ethnic rebels seek to use the Indian states to launch attacks or procure weapons. Locals in Mizoram and Manipur may support them, but Delhi does not want to upset the Burmese military junta because it fears that it will drive it further into the Chinese embrace. That may cause friction between the

Centre and the Northeastern states.

Third, as the Burmese military junta wilts under growing global pressure, collapsing economy and mounting insurgencies, it will draw closer to China, which strongly backs the junta. The military regime has already cleared 15 mega infrastructure projects funded by China since the February 2021 coup, drawing Myanmar into a substantial Chinese debt trap. The Burmese generals are totally dependent on Chinese support to protect their back at the UN and in other global forums. With the Chinese entrenching themselves firmly in Myanmar's economy and defence sectors, Indian worries over the security implications for its sensitive Northeast will grow.

The Mexican president recently called for a more significant Indian role alongside the UN and the Pope in global peace diplomacy. If there is one area where Delhi could try that out, it is Myanmar. It has so far backed the ASEAN by supporting its Five Point Consensus and adopted a wait-and-watch approach. Since that has not cut much ice, India could try out a Gandhi Peace Mission in Myanmar to explore the possibilities of starting a comprehensive dialogue involving all stakeholders. An aspiring regional power cannot just sit back and watch a crucial neighbouring country slip into absolute chaos.

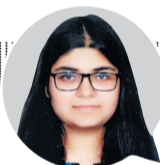
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SOURAV ROY

## CLASSIFICATION OF CREDITORS UNDER IBC

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The debate on the categorisation of particular creditors as financial or operational or not even falling under those categories is not novel. The issue of categorisation has been persisting since the inception of the Insolvency and Bankruptcy Code, 2016 (IBC) because of the underlying scheme of the IBC. This categorisation is by no means irrelevant, at least in the context of the IBC. The Scheme under the IBC is such that all the creditors prefer to fall under at least one of these two categories, the financial creditor category being the more preferred one.

The operational creditors are still on a backfoot compared to the financial creditors. This is because being categorised as an operational creditor does not guarantee any recovery. However, these creditors are still better placed than others, such as the involuntary creditors

who will not even have a chance to recover anything unless prescribed by the IBC itself.

Moreover, after the recent judgement of the Hon'ble Supreme Court in Vidarbha Industries Power Limited v. Axis Bank Limited, a distinction has been created between accepting the claims of financial creditors and operational creditors. It has been held that the acceptance of claims of the financial creditors is discretionary while for the operational creditors, it is mandatory.

This may seem to contradict the debt and default model that the IBC works on, that is, if it is proved that there was a debt and that was defaulted upon, then the creditors can make an application to the Adjudicating Authority. The discretion is not boundless and is limited, since the facts of the case do not allow its application in all cases. But it definitely has stirred up

a controversy because, on the face of it, this puts a dent in the position of the financial creditors. The same has been true for the homebuyers being categorised as financial creditors—this was because the allottees were a vulnerable class and were supposed to be given the most protected status under the IBC.

The controversy has not been limited to whether a particular creditor is a financial or operational creditor, but in fact, whether the creditor falls in any of the categories. For instance, the controversy about unpaid license fees being regarded as an operational debt is

We should not brush off the classification as irrelevant or having only little significance. ... As we are adopting new methods of resolution of debts such as mediation, and pre-packs within the scheme of IBC, the roles and rights of creditors are serious and pertinent questions

still pending before the Supreme Court.

In Jaipur Trade Expocentre Private Limited v. M/s Metro Jet Airways Training Private Limited, the full bench National Company Law Appellate Tribunal [NCLAT] has held that license fee should be considered as operational debt. By pronouncing this judgement, the NCLAT overruled its judgement in M Ravindranath Reddy v. G Kishan. The license agreement in Jaipur Trade Expocentre Private Limited was entered into by the parties to run an educational institution. According to NCLAT, the Adjudicating Authority erred in holding that the services under Section 5(21) would not include a license fee agreement of such nature.

Before this, in another case, Promila Taneja vs. Surendri Design Pvt. Ltd., the NCLAT held that the definition of services under the Consumer Protection Act and Goods and Services Act cannot be imported for the purposes of the classification of a debt under IBC. This judgement was distinguished from and not adopted in the Jaipur Trade Expocentre case. Moreover, the judgement in the

Promila Taneja case has been appealed before the Supreme Court and is currently pending over there.

There have been many such debates previously—the debate on licensing fees is just a recent one.

The essential point of classification of debt and consequently the creditors is the order of priorities and strength of the creditors in meetings and otherwise. We should not brush off the classification as irrelevant or having only little significance. This is because of many reasons apart from the ones stated above.

As we are adopting new methods of resolution of debts such as mediation, and pre-packs within the scheme of IBC, the roles and rights of creditors are serious and pertinent questions. Any classification which is not desirable can lead to adverse consequences like significant cram downs once a majority of the class of particular creditors, mostly the financial creditors, has approved a plan or any scheme or pre-packs.

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### MAIL BAG WRITE TO: letters@newindianexpress.com

#### India's two maladies

In his Independence Day speech, PM Modi spoke about how India can become a superpower if it eliminates two maladies—nepotism and corruption. But here is the catch when it comes to 'nepotism'—it is not just limited to family, but any other instance of favouritism as well. A good example is when the government chose Anil Ambani over HAL as a partner for the Rafale deal, despite HAL being more experienced. This is just one example among many. What Modi has said about the nepotism and corruption are very lofty ideals. The real question is—how will this be implemented?  
Tharicus S Fernando, Chennai

#### Governors not governing

The governor's role is well-defined in the Constitution. Yet, those governors posted in opposition-ruled states use the loopholes to overstep their role, in their enthusiasm to please their masters. The Centre is pleased with two such governors which is evident in both of them being considered for the vice-presidential post. One of them is our VP. Will the Centre ever post a non-partisan governor?  
Capt Raju Mathai, Kochi

#### Faulty engine

It was quite amusing to read a small news item *BJP survey for CM face makes buzz in state* (August 23). Ever

since Narendra Modi has become PM, he has been shown as the CM face in states. Apart from that, they now speak about "Double Engine ki Sarkar". Why is the BJP spending time and money? Ultimately, Modi and Shah decide who will be chief minister.  
N Nagarajan, email

#### Milari's folly

Mizoram CM Zoramthanga's daughter Milari Chhangte assaulted a dermatologist. I would like to praise the CM for apologising on behalf of his daughter. But this behaviour is not uncommon among the children of politicians and other bigwigs. Drunk on power, they often tend to disrespect

those around them. The nature of feeling invincible due to the status of one's parents is despicable.  
Neha Poniya, Koraput

#### Politics gone wrong

It is very unfortunate to see our leaders hurling abuses and indulging in name-calling every day. It will be unfortunate if investigative agencies are forced to follow the orders of political parties rather than doing their job in an unbiased manner. The idea used to be to strive for betterment, but all that happens now are allegations. Isn't there a single statesman who can speak out against this, or has her or his voice been silenced? These stalwarts fail to realise

that this will ultimately weaken the nation and divide our people.  
Hemachandra Basappa, Bengaluru

#### Munugode seat

It is such a sorry state of affairs to see the Munugode assembly seat empty when hardly a little over a year is left for the Telangana assembly elections. Holding a by-election for Munugode is proving to be costly, emptying the public coffers. Elections are held to select representatives who think and act on behalf of the people. Instead, vacancies like this are very unorganised and shabby. The rules must change.  
T Kaishash Ditya, Hyderabad