Delaying the inevitable

The Centre's relief to telcos can only be the first step in efforts to boost the stressed sector

The Union Cabinet's approval on Wednesday of a relief-cum-reforms package for the financially stressed telecom sector, though verily a step in the right direction, is at best only likely to delay the inevitable. In a tacit acknowledgment of the extent of stress in the sector as well as the far-reaching economic consequences of protracted distress in the industry, the Government decided to offer telecom service providers the option of a four-year moratorium on the payment of outstanding AGR and spectrum purchase dues. This one measure alone is expected to ease the immediate financial pressure on the telcos, especially at Vodafone Idea and Bharti Airtel. The venture created by the merger of the Indian unit of the U.K.-based Vodafone Group Plc and billionaire Kumar Mangalam Birla's erstwhile Idea Cellular Ltd. had deferred spectrum payment obligations and AGR liabilities that exceeded ₹1.68-lakh crore as of June 30. The Government's moratorium offer should, at least for now, relieve the burden of finding the funds to service these liabilities at the loss-making telco, giving it the space to focus on continuing to provide vital telecom services to about 27 crore wireless subscribers still with it. However, the woes at Vodafone Idea are deeper and symptomatic of the broader industry-wide maladies that have pared the once more-than-dozen-strong field to just three private players and one struggling state-owned company.

The entry of a deep-pocketed newcomer five years ago and its 'take-no-prisoners approach' to tariffs triggered a price war that depressed average revenue per user and bled most legacy telcos operationally into the red. The after-effects of the bruising competitive plunge in call and data tariffs are still being felt by the surviving operators and the issue of a floor price is one among many that the latest reforms completely skirt. To be sure, the Government has sought to address several anomalies in the policy regime including the definition of AGR that had led to the large build-up of dues and protracted and ultimately pointless litigation. Non-telecom revenue will hereafter be excluded from the AGR, a long-standing demand from the telcos. The telcos would also not have to pay any spectrum usage charge for airwaves acquired in future auctions, could share spectrum without incurring any additional cost, and hold the airwaves acquired at an auction for 30 years instead of 20. Several procedural norms have also been simplified. Still, the prospects of the sector diminishing to a duopoly remain high. With Vodafone Group CEO Nick Read categorically telling analysts in July that the firm would not be investing any additional equity into India and Mr. Birla throwing in the towel last month, the Centre's relief may be too little, too late.

Three is company

The Indo-Pacific would be better served by broader strategic cooperation initiatives

The U.S. has joined with the U.K. and Australia to announce a new trilateral security partnership, the AUKUS, that aims to ensure that there will be enduring freedom and openness in the Indo-Pacific region, particularly to "address both the current strategic environment in the region and how it may evolve", according to President Joe Biden. Two dimensions are significant: first, that it complements several pre-existing similar arrangements for the region, including the Five Eyes intelligence cooperation initiative, ASEAN and the Quad, the last including India; and second, that it proposes to transfer technology to build a fleet of nuclear-powered submarines for Australia within 18 months. Australia has ratified the nuclear NPT and has vowed to abide by its tenets, notwithstanding the highly sensitive technology transfer implied in the latest proposal. Mr. Biden went to lengths to assure the world that AUKUS was "not talking about nuclear-armed submarines. These are conventionally armed submarines that are powered by nuclear reactors. This technology is proven." Australia will become only the second nation, after the U.K., that the U.S. has ever shared its nuclear submarine technology with. The announcement of the partnership led to a minor kerfuffle with New Zealand, whose Prime Minister Jacinda Ardern said that under her country's 1984 nuclear-free zone policy, Australia's nuclear-powered submarines would not be allowed into the former's territorial waters. It also appeared to upset the political leadership in France, with whom Australia had struck a deal – now cancelled – for $90 billion worth of conventional submarines.

The broader strategic question that the creation of AUKUS begs relates to the unstated challenge that the group poses to the regional hegemonic ambitions of China, particularly regarding how far the U.S., the U.K. and Australia, along with other regional powers, will go, to preserve a free and open Indo-Pacific, including the South China Sea. Will the operationalisation of this security partnership lead to closer coordination among the nations concerned in terms of joint military presence, war games and more in the region, signalling a new, "latticed" posture to Beijing? After all, undersea capabilities including the ability to patrol may be vital to deterring Chinese military coercion in the region. Although no explicit mention was made of China in any of the AUKUS announcements, it is clear, as one official later said to media, that the transfer of nuclear propulsion technology to an ally in this context was intended to "send a message of reassurance to countries in Asia". Whether or not the purpose of AUKUS is to contain China's aggressive territorial ambitions, the imperatives of the Indo-Pacific would be better served by broadening strategic cooperation initiatives of this sort to include other powers that are deeply invested in the region, including India, Japan, and South Korea.

Two democracies and their vigilante problem

While in India, the word spells bad news, in the U.S., as seen in Texas, the citizen arrester seems hardly diminished

PETER RONALD DESOUZA

In the world's largest democracy, the word 'vigilante' evokes unsavoury images of goons stopping cattle trucks and lynching drivers, or video filming themselves assaulting men accused of love jihad, or beating up couples celebrating Valentine's Day. A vigilante in India is both bad news and a bad word. Vigilantes are anti-democratic. They lack the values of a constitutional democracy. A consensus has emerged in India to demand that the law-and-order machinery comes down heavily on such vigilante behaviour.

A respectable garb in the U.S.

So, imagine my shock when I discovered that in the world's oldest democracy, the word 'vigilante' receives only half the opprobrium that we heap on it in India. The other half is suppressed by a law that makes vigilantism respectable. One form of the vigilante, in the United States, is the 'citizen arrester' who enjoys legal status and whose actions are protected by a law that permits him or her to pursue and arrest a person accused of breaking the law. Drawing on a legal convention that comes from the Common Law tradition in England, dating from the 12th Century, a citizen arrester can physically arrest a person, on behalf of the Monarch (now State) who is regarded by them as breaking or evading the law. There are procedures to be followed, and risks involved for wrongful arrest, but assuming that these are adhered to the citizen arrester is regarded as aiding the consolidation of a political system based on the rule of law. Because of its potential for abuse, in legal circles in the U.S., there is a debate on the need to circumscribe the scope, and eligibility, of who can be a citizen arrester.

The 'Heartbeat Bill'

But rather than diminish the place of the citizen arrester, the recent decisions of the Texas legislature are in fact encouraging the practice. Two cases are particularly noteworthy. The first is the latest innovation introduced in Senate Bill 8 (SB8) in Texas, known as the 'Heartbeat Bill', signed into law by the Texas Governor Greg Abbott in May 2021, that seeks to ban abortions after six weeks when the foetus registers a heartbeat. The passage of this law has produced an active debate in the U.S., between pro-abortion and pro-life groups, drawing on medical science, law, bioethics, and women's rights, to refine the different elements of the *Roe vs Wade* judgment of 1973.

There are five aspects worthy of attention. The first is it deprives women of the right over their own bodies by making abortion illegal after six weeks when many women do not even know that they are pregnant. This in effect means that abortions, when needed, are unavailable. The second is to include, in the applicability of the law, even women who are victims of rape and incest. Victims are thereby subjected to a second victimisation since now they will be compelled to carry the pregnancy to full term or seek termination in the dark alleys beyond the law. The third is to make culpable

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anyone associated with an abortion after six weeks and this could include the Uber driver who takes the pregnant woman to the clinic, the receptionist, the nurse and the doctor. The fourth is the declining, by the Supreme Court of the USA, in a five versus four vote, to hear the injunction challenging the Texas Anti-Abortion Law.

In her dissenting note, Justice Sonia Sotomayor wrote: 'Presented with an application to enjoin a flagrantly unconstitutional law engineered to prohibit women exercising their constitutional rights and evade judicial scrutiny, a majority of justices have opted to bury their heads in the sand... The Court should not be so content to ignore its constitutional obligations to protect not only the rights of women, but also the sanctity of its precedents and of the rule of law.'

This sandy terrain to which the court retired is, unfortunately, very familiar to us in India. And the fifth, on which I wish to comment here, is the legal device that blocks State officials from enforcing the law but outsources the enforcement to private citizens who can sue abortion providers from performing abortions and are entitled to collect $10,000 as a civil payout in addition to their legal fees. Such a person can even be someone from outside the state who can show any connection to the abortion. Enter the 'bounty hunter' or 'citizen arrester'.

While each of the five aspects raises important ethical and legal issues I wish to highlight only the fifth since Republicans in Texas have used the legal device – call it a cunning innovation – of empowering and encouraging citizen arresters to perform the job of state officials who are thereby protected from being sued.

The effect of this innovation is to deny women the rights given by *Roe vs Wade*. The case shows the length to which partisan groups in a democracy, even in one as mature as the U.S., will go to overturn settled law and redesign both the public discourse and the institutional order to make it consistent with their religious ideology. Linda Greenhouse commenting on the legislation in her article in *The New York Times* (September 9, 2021) asked in exasperation: 'Who let God into the legislative chamber?' This is the same question we often ask in India.

Voting 'reforms'

The second case in Texas concerns the Reforms to the Voting Law in Texas which seek to reverse the gains of earlier years. SB1, the Bill recently signed by the governor, bans drive through voting, 24 hour voting, and distribution of mail-in applications. It requires new ID requirements for voting by mail, creates new rules for voter assistance, establishes monthly checks, etc. To block the passage of the Bill, the minority Democrats who felt the changes amounted to voter suppression and would disadvantage minority voters, flew out of the State to Washington DC so that the house could not convene for want of a quorum. The Republicans responded by relying on the law to compel voting and thus Speaker Dade Phelan signed warrants authorising the Sergeant-at-Arms to arrest and produce the missing representatives. The length to which the Speaker went is shocking to our democratic sensibilities. Some representatives stated that they were less worried of being arrested by officials and more by citizen arresters.

In an overview article titled 'Vilifying the Vigilante: A Narrowed Scope of Citizen's Arrest', Professor Ira P. Robbins discusses its historical origins, pitfalls, good application and reform. He argues for the scope of citizen arresters to be restricted to only a small category of people, such as shopkeepers, out-of-jurisdiction police, and private police forces, and being abolished in all other cases. The trend, unfortunately, as shown by Texan laws, SB1 and SB8, is moving in the other way. Because of the opprobrium we have heaped on vigilantes in India, I hesitated to equate them with the citizen arrester till I read the phrase in a letter on SB8, by the Chairman of the U.S. House Judiciary Committee, Jerrold Nadler, to the Attorney General, Merrick B. Garland, to prosecute 'would be vigilantes attempting to use the private right of action established by that blatantly unconstitutional law'. The oldest and the largest democracies, it seems, both have a vigilante problem today.

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E-Shram needs some hard work to get going

The nuances of the unorganised workers' identity are complex which portal registration may not be able to capture

K.R. SHYAM SUNDAR

On August 26, 2021, the Ministry of Labour and Employment (MOLE) launched the E-Shram, the web portal for creating a National Database of Unorganized Workers (NDUW), which will be seeded with Aadhaar. It seeks to register an estimated 398-400 million unorganised workers and to issue an E-Shram card. However, it has come into existence more than a decade after the passage of the Unorganised Workers' Social Security Act in 2008; and if we consider inter-State migrant workers, the portal is a little more than four decades late. It has come about even after repeated nudging by the Supreme Court of India. Had the Central and the State governments begun these legally mandated processes on time, much of the distress of lakhs of vulnerable workers would have been avoided. It is the result of state apathy. No government – either the United Progressive Alliance or the National Democratic Alliance – can stake claim for this legally mandated measure. In fact, the political class owe an 'apology' to informal workers.

A long process

Given the gigantic nature of registering each worker, it will be a long-drawn process. It is natural that in the initial stages, the pace of registrations will be slower; at the time of writing this article, 0.61 million workers have been registered. Considering the estimated 380 million workers as the universe of registration – debatable as the novel coronavirus pandemic has pushed lakhs of workers into informality and the estimate also depends on the assumptions used for estimation – 6.33 million workers have to be registered for completion of registration in 60 days, and 4.2 million workers for 90 days. The Government has not mentioned a gestation period to assess its strategy and efficiency.

Workers stand to gain by registration in the medium to long run. But the instant benefit of accident insurance upto ₹0.2 million to registered workers (https://bit.ly/3zbvDLv) is surely not an attractive carrot. The main point of attraction is the benefits they stand to gain during normal and crisis-ridden periods such as the novel coronavirus pandemic now which the Government needs to disseminate properly.

Data security, other issues

There is also another issue: why should small employers be incentivised to ask or require their workers to register even though the government reportedly requires them mandatorily to register their workers (https://bit.ly/3ChthwB). While the Government can appeal to them, any penal measure will hurt the ease of doing business. The apparent productivity gains arising out of social security assurances to these workers is a moot point. One of the vital concerns of e-portals is data security, including its potential abuse especially when it is a mega-sized database. The central government would have to share data with State governments whose data security capacities vary. There are also media reports pointing out the absence of a national architecture relating to data security.

There are several issues concerning the eligibility of persons to register as well as the definitional

RAJEEV BHATT

issues. By excluding workers covered by EPF and ESI, lakhs of contract and fixed-term contract workers will be excluded from the universe of UW. Under the Social Security Code (SSC), hazardous establishments employing even a single worker will have to be covered under the ESI, which means these workers also will be excluded. The NDUW excludes millions of workers aged over 59 from its ambit, which constitutes age discrimination. Given the frugal or no social security for them, their exclusion will hurt their welfare.

As such, SSC is exclusionary as ESC and EPF benefits will be applicable only to those employed in establishments employing 10 or 20 workers, respectively. Thresholds in labour laws segment the labour market. Many workers will not have an Aadhaar-seeded mobile or even a smartphone. Aadhaar-seeding is a controversial issue with political overtones, especially in the North-eastern regions. But it is necessary and the Government is right in insisting on it. The extent of definitional and systemic exclusions is vast and there may be other categories of exclusion due to possible procedural deficits.

Complex identities

The very identity of unorganised workers presents problems thanks to its complexity and ever-changing identities. Many are circular migrant workers and they quickly, even unpredictably, move from one trade to another. Many others perform formal and informal work as some during non-office hours may belong to the gig economy, for example as an Uber taxi or a Swiggy employee. They straddle formal and informal sectors.

The nuances of the unorganised workers' identity are so complex that one wonders whether the mechanical and assumptions-based portal registration will be able to capture the complexities and dynamics involved regarding them. Even though MOLE has included gig workers in this process, it is legally unclear whether the gig/platform worker can be classified first as a worker at all (the other three Labour Codes do not include these workers), and second as organised or unorganised workers – the definition of an "unorganised worker" in the Social Security Code (*vide*. S.2(86)) does not specifically include them, unless they are declared 'self-employed' or 'wage workers'. In fact, the NCO family code does not specifically include 'gig/platform worker' even though they may be registered under several categories of 'drivers' which will hide their unique identity. Of course, there is an all-inclusive miscellaneous category that will have to be intelligently used to expand the occupational categories.

Other impediments

The central government will have to depend on the State governments for this project to be successful. The main trouble points arise at the regional level for two primary reasons. It has been reported that in some States such as Maharashtra, the server was down for a few days. The incentive for multiple attempts on the part of registering workers will be weak. The helping stakeholders must make suitable interventions in these cases.

In many States, the social dialogue with the stakeholders especially is rather weak or non-existent. The success of the project depends on the involvement of a variety of stakeholders apart from trade unions, massive and innovative dissemination exercises involving multiple media outlets of various languages, the holding of camps on demand by the stakeholders and on their own by the Government, efficiency of the resolution of grievance redress mechanisms, micro-level operations, etc. There is also the concern of corruption as middle-service agencies such as Internet providers might charge exorbitant charges to register and print the E-Shram cards. Therefore, the involvement of surveillance agencies is crucial. More importantly, the Government must publish statistics at the national and the regional levels of the registrations to assess the registration system's efficiency.

E-Shram is a vital system to provide hitherto invisible workers much-needed visibility. It will provide the Labour Market Citizenship Document to them. I would go one step further to argue for triple linkage for efficient and leakage-less delivery of all kinds of benefits and voices to workers/citizens, *viz*. One-Nation-One-Ration Card (ONOR), E-Shram Card (especially bank account seeded) and the Election Commission Card. Last but not least, registrations cannot be a source of exclusion of a person from receiving social assistance and benefits.

K.R. Shyam Sundar is Professor, HRM Area XLRI, Xavier School of Management, Jamshedpur. The writer acknowledges the inputs from V.P. Deshpande, former Labour Department official, Government of Maharashtra, and Sonia George, Secretary, SEWA, Kerala

LETTERS TO THE EDITOR

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No NEET Bill

There is much speculation on whether the President of India would give his assent to the Bill introduced by Tamil Nadu opposing the National Eligibility cum Entrance Test (NEET) and also about its constitutional validity in light of Section 10D of the Indian Medical Council Act prescribing NEET as a uniform examination for admission to medicine.

The President cannot refuse to give his assent to the Bill. Under Article 201, at best he could refer the Bill back to the Legislature and if the Legislature rejects the suggestion, the President has no option but to give his assent though the word 'consideration' is used.

This would also be in conformity with the democratic principles of the Legislature fulfilling the people's mandate.

The next point is about how far the State not wanting NEET, and its pitch for State Board examinations marks as a means of entry into the college, is correct and valid. Entry 66 speaks of determination of standards in institutions for higher education, but would that also include prescription of high standards for entry itself to the medical education or should that be left to the States under entry 25 to prescribe entry into medical education only after which coordination and standards apply?

Prescribing higher standards of education is one thing but at the same time blocking the entry of poor people by prescribing an examination which has not been hitherto there is another.

By the NEET exam, State governments have been denuded of their powers.

N.G.R. PRASAD,
Chennai

Mob mentality

It is disturbing that people including celebrities have begun to demand instant delivery of justice especially in heinous crimes that involve women and child victims. It is dangerous.

The low level of conviction rate in rape cases, prolonged trials and defective investigations are affecting people's confidence in the system's efficiency. There should be fast tracking in dealing with heinous crimes. Instant justice cannot be a substitute for justice delivered through statuary means in time.

DR. D.V.G. SANKARARAO,
Nellimarla, Andhra Pradesh

Earn respect

Last Sunday, when a Bengaluru-Hyderabad flight developed a glitch, Union Minister Shobha Karandlaje ensured that all fellow passengers were looked after while refusing the offer of a VIP lounge. When someone big 'demands' respect, it is in bad taste. Actor-turned Rajya Sabha MP Suresh Gopi should take a cue from this ("MP prompts police officer to salute him", September 16).

P.G. MENON,
Chennai

CORRECTIONS & CLARIFICATIONS: The web registration link given in the story titled "Virtual duathlon to be held" (Sept. 16, 2021, some editions) was erroneous. It should have been https://www.apollod2d.com/

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