

Need to Tread Carefully

With the corporate insolvency law nearly fully rolled out, the focus of the government is likely to shift to implementation of what is probably the more difficult part of Insolvency and Bankruptcy Code - the insolvency of natural persons. While the government deserves a pat on the back for taking up the archaic law of personal insolvency for reform, a deeper and wider thinking is required for its implementation.

Insolvency of natural persons is complex as it is intertwined with social, political and cultural issues. It is different in concept and approach from insolvency of organised entities or persons engaged in commercial activities. Business insolvency policy is driven almost exclusively by economic concerns but insolvency relief for natural persons include elements of humanitarian empathy. Arguments supporting business insolvency are aimed at supporting communities and jobs as a positive side effect of saving failing businesses. But the desire to relieve individual suffering is central in the context of natural person insolvency. In the insolvency of companies and other legal entities, the debtor can be and often is completely dismembered and allowed to die. One of the primary goals of a regime of insolvency for natural persons, in contrast, is avoiding this fate for the debtor. A severe outcome may have negative consequences for other people in the debtor's household and community. Suicide by farmers reeling under debt is a living example of how a person in financial distress may respond in the absence of a mechanism that provides a dignified exit from debt trap.

Providing insolvency relief to natural persons is different from providing benefits under social welfare schemes. The goal of most social support regimes is simply to redistribute resources to individuals who lack those resources and are somehow inhibited from accumulating appropriate resources for themselves. Insolvency regimes are less like social assistance, and more like social insurance, protecting individuals from financial tragedy. These distinct systems are designed with distinct goals in mind although there are some overlapping elements in both. Farmers in debt can be the biggest beneficiaries of personal insolvency law. They can be provided relief through insolvency law rather than by across the board waivers of loans that run the risk of causing severe implications on economic health of the State.

In India, bankruptcy is perceived differently by various sections of society and has different implications for them. When notified, the law will apply to over 1.2 billion people living across the country with diverse cultures, traditions, customs and way of life. Filing bankruptcy is considered stigmatic in many societies in India as it impacts the social standing of individuals as also of their family members. People hesitate in declaring bankruptcy because of the fear of being ostracized by the society. The insolvent person loses credibility in the eyes of future creditors. Only in a few select communities declaring insolvency is considered manifestation of a risk taking entrepreneurial trait. Simultaneous with implementation of law, a strategy should be drawn to initiate the process of mind set change towards bankruptcy and disassociating stigma from insolvency. From school textbooks to media campaign, a systemic and aggressive plan should be drawn to educate people and build awareness about the positive dimensions of this law. This clearly dovetails into the government's financial literacy goals.

The stakeholders, principles, approach and outcomes of personal insolvency are different from that of insolvency of persons engaged in economic activity. Business insolvency rules are often crafted on the usually unstated assumption that the actors involved, including the debtor, are fully rational and informed economic actors. Natural persons seldom behave in a way consistent with the classical economic ideals on which business insolvency systems are founded. Besides, insolvency regimes for natural persons implicate salient issues of data protection and personal privacy. A whole host of social and economic regulatory issues, such as individual counseling, education, social welfare provision, and family and housing policy

are involved. Understanding the dynamics of personal insolvency deeply is vital. Detailed consultations with state governments; local bodies and members of communities from different cultures and strata will help in preparing for implementation. A comparative study of insolvency laws in societies similar to that of India should be undertaken. Cultural-shift preparedness also needs to be assessed and taken into account. Otherwise implementation of the law would offer a number of challenges with concomitant delays.

Vesting Debt Recovery Tribunals with jurisdiction to deal with personal insolvency and bankruptcy resolution is likely to hamper efficient access to resolution and the speed. DRTs are located in state head quarters. Traveling long distance from a village or small town to file or participate in an insolvency proceeding involving small amounts will be time-consuming and rigorous. We need district headquartered adjudicating body. Moreover, DRTs are already over-burdened with work and suffering from backlog of cases. To add this massive jurisdiction to their existing work will impact the quality of their existing Jurisdiction.

Personal insolvency legislation will impact every strata of our society. It is crucial its implementation is well thought through. A flawed approach may defeat an otherwise laudable objective.

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