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COGNIZANCE

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RBI's Monetary Policy Committee: A Pathway towards Normalcy?

Sluggish growth, increasing vulnerability of financial institutions, mounting NPAs, non-convergence working between financial and real sectors and poor monetary transmission continue to haunt the economy despite the Reserve Bank of India's (RBI) intensive financial stability measures. With financial and monetary stability being RBI's core objective, the apex bank is geared towards restoration of equilibrium in these unprecedented times. The Monetary Policy Committee (MPC) of RBI announced that interest rates would remain unchanged thereby taking an accommodative stance towards its policies. Amid the recent inflation in retail consumer prices, RBI also said that it would ensure that this rise in inflation remains within their targets and control. The repo rate currently stands at 4.0% and the reverse repo rate at 3.35%. The decision indicates that MPC would monitor dynamics for a durable reduction in inflation before the policy rates are lowered again and patiently await to use its remaining monetary ammunition. At the surface, this appears to have a balancing effect between financial stability and growth-support in light of the current challenges posed by the COVID-19 Pandemic.

The existing disconnect between our economy and the financial market indicates that RBI would be watchful of the current inflation as well as the existing exuberance in the markets. RBI is now prioritizing strain felt by the economy and tackling the challenges to the growth of the economy with the containment of retail inflation. Central Banks' MPC could be seen as judicial in their approach, playing it safe while maintaining the status quo of the current rates with the scope of further monetary action even after this apparent pause. Current rates could be accommodating enough to allow for such a break without unwarranted consequences. It also allows them to monitor the existing risks associated with Food Inflation as well as the Cost-Push pressure due to fuel price rise. MPCs' approach was a cautious step showing concerns over the evolution of uncertain inflation trajectory while supporting the growth prospects that could be available as and when this trajectory allows. The decision to maintain this status quo could be based upon their short-term outlook towards inflation in the current uncertainty because of cost-push factors and existing supply constraints.

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RBIs' accommodating stance with the current backdrop of diminished growth and subsequent expectation of a reduction in inflation over a medium-term period puts the current policy in congruence with the current market expectations and provides them with further space for easing of monetary measures to revive the economic growth during COVID-19.RBIs' step towards allowing some form of restructuring facility to the banks facing trouble in restructuring the loans without classifying them as Non-Performing Assets (NPA) , could be seen as a positive step that could further ease the stress on Banking systems. This new resolution framework could be seen as an additional systematic undertaking to tackle the stress induced by the COVID-19 Pandemic. Additionally, RBI has also recognized the need for this facility for standard accounts facing difficulties while restructuring, and this facility has also been extended to SME, corporations, and personal loans providing each segment with proper & necessary safeguards. Addressing the MSME sector, which has been deeply impacted by this Pandemic, the reasonably anticipated scheme for restructuring this sector could provide them with additional support & relief in this tumultuous time. Addressing the concern regarding liquidity in this Pandemic faced by MSME could facilitate an amended system and platform for the banks. This restructuring of the loan scheme could be seen as a breather to already liquidity strapped financial sectors, already facing concerns over the asset quality issue. An expert committee under KV Kamath could overlook and provide recommendations regarding the scheme's details and restructuring plans. This could give the MSME, companies as well as individuals better safeguard in this liquidity crisis during the Pandemic.

To improve flow of credit and enhance liquidity additional measures were announced by RBI to accelerate the growth of the economy. RBI also focused on measures that could deepen the digital payment facilities among all other. These announcements could harmonize market risk associated with capital charge treatment of investment by banks in debt instruments and ETF's as well as Debt Mutual Funds and prediction for improvement in the bond market, as there could be higher participation by banks in the bond markets over a while. Additionally, a measure relating to increasing the sanctioned loan to value ratio (LTV) for gold loans to 90 percent till March 31, 2021, is an effort to mitigate the impact of COVID-19 on households at a micro-economic level however this move fails to soothe deeper wounds aggravated on account of the virus-induced financial distress. Additional liquidity facilities provided to NABARD and NHB will further support credit push in the economy. RBI has continued to focus on also bringing down borrowing cost for all.

In light of India's sluggish economic growth, uncertain external demand, and rising inflation, the developmental and regulatory measures announced by RBI adopts a prudent approach upholding the current policy rates in existing circumstances. Their strategy could be seen to be in perfect conformity as per the currently developing state of the economy while keeping enough headroom for the future changes. However, it remains to be seen how much relief will be provided, and what will be the take-up for this resolution mechanism.

Competition or Unlawful Contractual Interference: The Line Continues To Remain Blurred

The formalization and maturation of the nation's business ecosystem has led to a competitive environment ripe for conflict. With growing competition between multinational companies, the tendency of organisations to indulge in anti-competitive practices amounting to Tortious Interference has increased manifold. Thus, the judiciary is swamped with causes of action for interference with contract or business relations. In light of an adversarial legal system and predatory business environment, promulgation of a robust and comprehensive law relating to economic torts becomes essential especially one that recognizes that contractual obligations are sacrosanct and cannot be skewed to a party's advantage.

The premise of capitalism of free, fair competition without interference from excessive government regulations vis-à-vis courts power to enforce contracts and protect against wrongful predatory conduct maybe considered as crossing the line into Tortious Interference with another's contract. Moreover, the courts inability to establish to a coherent, uniform body of law concerning interference claims indicate that the issue may continue persist and haunt businesses for long.

In recent years much commercial litigation has involved claims for Tortious Interference with contractual or other business relations. In a recent decision of Inox Leisure Limited vs. PVR Limited, the Delhi High Court further blurred the demarcation between freedom to trade and unlawful contractual interference, as the judgment placed a restraint on the freedom to trade if the person causes a breach or interferes with contractual performance.

Unfortunately, the law in India pertaining to tort of interference with contractual relations has not particularly evolved with few cases to demonstrate the Indian courts' view on this aspect. Moreover, this question has not been placed before the Supreme Court as on date. With orders passed on the aspect of Tortious Interference, the issues are very fact-based and do not provide an adequate overview of jurisprudence on Tortious Interference, as did the ruling in Inox Leisure Limited vs. PVR Limited.

In theory, all contracts qualify for protection from unreasonable interference. In recent times, non-competition contracts are a recurrent source of litigation in this area of law. The employer in these contracts requires an employee to sign an agreement prohibiting the employee from working for a competitor in the same geographic market. The judiciary has encouraged free trade and absence of impediment in performing any business activity throughout the country under Section 27 of the Contract Act.

Taking a similar viewpoint, the court in Modicare Limited Vs. Gautam Bali held that Section 27 of the Contract Act makes every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind – unenforceable.

Thus, even if the defendants or any of them, under their agreement with the plaintiff, had undertaken not to carry on or be involved in any capacity in any business competing with the business of the plaintiff, even after leaving employment with/association of the plaintiff, the said agreement, owing to Section 27 would be void and unenforceable and the plaintiff on the basis thereof could not have restrained any of the defendants from carrying on any business or vocation, even if the one which the defendant had agreed not to carry on.

Therefore, as observed from past rulings, its no surprise that courts are reluctant to provide an injunction that place a cap on doing business activity or to approach the client of competitor company as in many cases it deprives an employee to meaningfully pursue a livelihood. This decision clears the way for businesses to enter into such agreements so long as the restraints promote competition and do not violate the rule of reason. Given the vague and ambiguous standards, it remains to be seen how courts will apply the interplay of Section 27 of Contract Act and Article 19(1)(g) of the Constitution to address the multitude of possible business-to-business agreements and their effects on free market competition. Ultimately, the door is seemingly wide open for varied commercial collaborations with accompanying restraints on trade, which no doubt will require greater scrutiny on their economic justification to balance against worker mobility and competitiveness.

Regularising Period Leaves

How the Concept of Period Leaves is Perceived by Indian Companies?

The period leave policy is considered a bold step in tackling an age-old taboo in India. The concept is not novel, but its implementation is. In 2017, Culture Machine, a Mumbai-based digital media company, became the first Indian company to have introduced the first day of the period (FOP) leave for their female employees. Recently, Zomato declared 10 days of "period leave" per year, in their endeavour to de-stigmatize the issue and normalize menstruation. However, about 4 companies in India have implemented this leave policy so far. A fact that many aren't aware of is that Bihar is the only state where government employees can avail 2 leaves a month for 'biological reasons'. It goes without saying that the policy is widely appreciated by the female gender but our organizations are implementing at an agonizingly slow pace.

Will it help break workplace taboo around menstruation and also in the larger society?

The world including India has evolved into a progressive state in terms of economic development, but societal mindset has failed to mature with the changing dynamics. The discussion on "periods" is considered a taboo in rural and urban areas alike, although the urbane population is more progressive as opposed to their rural counterparts. Introducing a period leave policy indicates normalization of the period talk and showing empathy towards the cycle which can be painful for many, if not all. Women should not be silent, punished, treated as an outcast for their biological framework. This open discussion will pause the paddle on a patriarchal society and transition towards an equitable society for all genders.

Will it encourage more women to join the workforce?

Several women's rights activists and social media users welcomed this progressive move that was long overdue. Most women in the workforce take pain killers and continue working. Others experience excruciating pain during periods. Recognizing this biological framework and providing a sense of comfort will drive more women to join the workforce. By no means does this move take away from the hard won space that women have gained, rather we feel valued and respected.

Will it anyway hinder women's career progression?

There are many dividing opinions on the subject issue. The naysayers argue that a period policy might prejudice employers against hiring women and led to unfair treatment and hindrances in their professional journey in the form of prejudiced hiring, lower salaries, and slower promotions exacerbating the existing problem. This is not entirely false. However, humanizing laws and HR policies for the employee demographics and challenges leads to workforce integrity and overall development of the company.

How many companies have this policy in India as of now?

Till date, only four organisations in the country have fully implemented this leave so far. Although organizations with policies tailored taking into account their employee's demographic-mix are few, strides are being taken in the right direction by companies like Culture Machine, Gozoop, W&D, and most recently, Zomato. There are also forms of menstrual leave policies in Indonesia, Japan, South Korea, Taiwan and Zambia providing menstrual leave policies independent of vacation and sick days. However, this policy should be widely expanded, so that additional leaves do not cause hindrances in women's progress at the workplace and avoid it from being used as a tool to justify lower salaries and a hiring bias against women.

Jury Is Out On Whether Daughters Have Right to HUF Property

Background

In a landmark judgment, the Supreme Court on Tuesday ruled in favour of rights of daughters to have a share in a Hindu Undivided Family (HUF) property. Settling the disputed question of law, a three-judge bench headed by Justice Arun Mishra held that daughters will have a right in the parental property in accordance with the 2005 amendment in the Hindu Succession Act. The court held that daughters' rights are absolute after the amendment and that she would have the right of inheritance irrespective of whether the father was alive at the time of the amendment or not. This clarification is important since it sets aside a clutch of previous decisions by the top court that she would have the coparcenary right only if both the father and the daughter were alive as on September 9, 2005 when the amendment was notified.

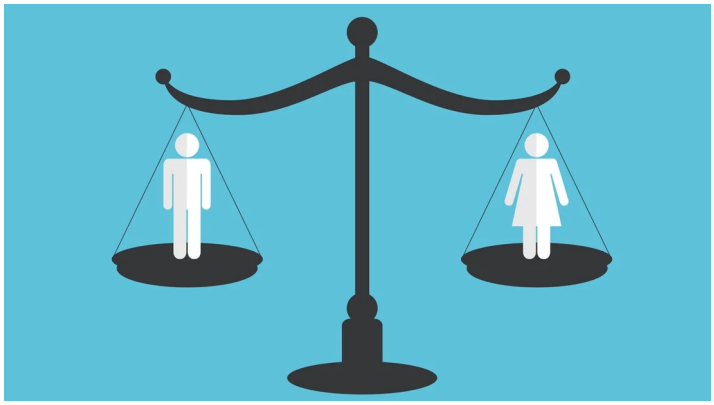
Supreme Court Ruling

The court decided that the amended Hindu Succession Act, which gives daughters equal rights to ancestral property, will have a retrospective effect. It held that a daughter, living or dead, as on the date of the amendment, shall be entitled to a share in her father's property. It means that even if the daughter was not alive on the date of the amendment, her children could claim their rightful portion.Settling the ambiguity around the nature and extent of a daughter's rights to an HUF property, Justice Arun Mishra stated, "A daughter always remains a loving daughter. A son is a son until he gets a wife. A daughter is a daughter throughout her life."

Coparcener is a person who has a birthright to parental property. Since the right to coparcenary of a daughter is by birth, it is not necessary that the father should be alive as on September 9, 2005. The court has thus overruled an earlier 2015 decision.

Rationale

The widow or daughter could claim a share, being a Class I heir in the property left by the deceased coparcener, and a widow was entitled, having a right to claim a share in the event of partition daughter was not treated as a coparcener. Thegoal of gender justice as constitutionally envisaged is achieved though belatedly, and the discrimination made is taken care of by substituting the provisions of Section 6 byAmendment Act, 2005. Hence, it is clear that the right to partition has not been abrogated. The right is inherent and can be availed of by any coparcener, now even a daughter. The court recognised that just like sons, the amendment also extended the status of the coparcener to a daughter, allowing her to enjoy the same rights as a son is a step towards gender justice in law.



Association of Unified Telecom Service Providers Of India Vs. Union Of India

Background

The 2015 litigation gave rise to the 2019 judgment. The Supreme Court upheld the interpretation of Adjusted Gross Revenue ("AGR") that was adopted by Department of Telecommunications ("DoT"). It said that Telecom Service Providers ("TSPs") had an obligation to pay license fee in accordance with the terms and conditions of the license as it was nothing but a contractual obligation and this has to be followed by TSPs. The TSPs had accepted the terms and conditions of the Migration Package voluntarily and unconditionally and this has led to substantial growth of the sector. The SC on 14th February, 2020 reprimanded telecom operators and the Government for not honoring the deadline that it had set for the companies to pay up the adjusted gross revenue that is due to the government.

The SC went a step further and questioned the authority of the DOT order which had stayed any coercive action against the telecos on the recovery proceedings. The bench observed that there seems to be no rule of law that was followed and that there seems to be a money power in play and a hand-in-glove movement between the telecos and the DOT. This Supreme Court Order has huge consequences on the telecom operators as well as the department of telecommunications.

In its judgment dated October 24, 2019, SC has set aside the decision of the Telecom Dispute Settlement Appellate Tribunal dated April 23, 2015 which had given its interpretation to the terms 'gross revenue' and 'adjusted gross revenue' as defined under the Unified Access Service License ('UASL').

IWhile doing so, the SC allowed the appeals filed by the DoT and set aside the cross appeals filed by the TSPs. The TSPs were found to be in default in payment of license fee as demanded by the DoT, in terms of the UASL, and SC held that interest and penalty had been rightly levied upon the TSPs over and above the license fee that was charged. The TSPs have been granted 3 months' time from October 24, 2019 to deposit the amounts due to the DoT

In the latest judgment on 1st September, 2020, a bench headed by Justice Arun Mishra rejected the prayer of the Department of Telecommunication seeking payments by telecom companies in a staggered 20 year time period, allowed the TSPs to make payments in a period spanning 10 years. The SC has held that the telecom companies who are liable to pay AGR dues shall make payment of 10% of the dues by March 31, 2021.

The fate of Vodafone Idea Ltd. which is closely pegged to the SC's verdict on AGR dues has been delayed until August 14. With the issue of timeline for AGR payment still undecided the future of the going concern is largely undetermined. If the Apex Court decides on a 10-year repayment tenure, it would pose as a grave challenge for the debt ridden VIL. Repayment of such expenditure would require higher tariffs, cost savings, and an equity capital infusion. Also, most financial institutions are likely to refrain from lending large amounts of money to VIL. If the SC decides on a 15-year repayment schedule, VIL will experience some challenges but that will surely be less. With the 20year moratorium period in spectrum payments, VIL could stay afloat if tariffs increase and divestments succeed, however this may be a challenge due to the pace at which the telecom giant lost its customers in the past few quarters.

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