

# DOES INDIAN INDUSTRY HAVE A PLACE IN MODI'S "NEW INDIA"?

**C**ongratulations India! We have succeeded in finally demolishing the layers of divisive politics that have plagued us, and forced us into bad choices, leading to—wide-scale poverty, inadequate infrastructure, measly reforms, horrendous corruption, empty political gestures and slogans, and unacceptable dynasties within our robust democracy.

The actual implementation of the many schemes and reforms on the ground—irrespective of the vote shares—by the Modi-led government in the past five years has translated into this confidence in our democracy.

Instead of the poor, the incumbent government has actually attempted to tackle poverty and other problems through sustainable schemes with long-term goals. **Similarly, Indian industry too is in dire need of much sought-after reforms.**

Having been slaves for centuries, Indians have been habitual rule breakers and protesters and could never consider themselves as part of the establishment mainly due to the step-motherly treatment that continued to be meted out by the people in power even after independence who continued with the British legacy.

With digitisation, introduction

of GST and Modi Govt's stress on clean governance, most of **such innocent law breakers who were forced to evade the law till now could henceforth do business in a clean and transparent manner.** But in the absence of any transitional provision and unlimited powers in the hands of enforcement agencies found themselves caught in the whirlpool of never-ending investigations.

**A simple limitation period of, say, anywhere from 3 to 5 years for initiating any investigation under any law by any enforcement agency would have allowed most of such past forced offenders to become fully compliant honest citizens of India instead of constantly living under fear and perpetuating the wrongs done by them earlier.**

The current environment of witch hunting in the country where every industrialist is treated a bigger criminal as compared to dacoity and murder and the entire nation is found baying for his blood has done some serious harm in the eco system **where a large part of the educated upper middle class has decided to migrate out of the country.** While the individual may be penalized and/or blacklisted,

there is no reason to do so to all his children & grandchildren who are otherwise marked for life having been born in the wrong family.

As against our dream of a free India where every citizen could hold his head high, we find ourselves today under a constant fear of Enforcement agency officials who can pick any individual or group of individuals at their whims and harass and torture without assigning any reason and without any accountability.

All they need is to frame some flimsy charges against the individual and rest of the needful is done by masala story hungry 24 hour news channels to hang the individual even before he could understand the charges slapped on him. **Somebody very rightly said that in India we don't have RULE OF LAW but RULE OF MEN.**

The Bankruptcy Law Reforms Committee (BLRC) envisioned the IBC as "a collective mechanism for resolving insolvency within a framework of equity and fairness to all stakeholders to preserve economic value in the process". However, due to arbitrary & indiscriminate amendments **IBC is neither fair nor equitable to all stakeholders and due to never ending litigations has also failed to**

**preserve economic value.**

The IB Code was designed to be more inclusive in approach and there was definitely no intention to avoid promoters from submitting resolution plans. However, the effect of Section 29A is exactly opposite to the preamble to the IB Code as set by the BLRC.

This also had the unintended, and unfortunate consequence of painting the genuine promoter and entrepreneur with the same brush as a fraud, and/or a wilful defaulter. **The line between a regular business caught in the fluctuating global and domestic economic cycles, and a fraud, and/or a wilful defaulter needs to be redrawn.**

**Most affected in the current environment is the vast rural population who are looking at large scale job losses due to continued industrial slowdown as well as forced liquidation of even otherwise viable and operating companies due to inconsistencies in the newly introduced IB Code.**

However, to ensure that the defaulting promoters who could not save their company from external downturn, do not get back their Companies for a song, a premium of say, 20% could be applied over the highest 3<sup>rd</sup> party bid for comparison with the promoters' bid. This would ensure that the promoters pay



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While the government is focused on a sustained growth of our economy, the Indian industry which contributes to 26% of the country's GDP seems to have been left on the wayside, unprotected, and marked for criminalization. Why?

substantially higher amount than anybody else is willing to pay and would also lead to much higher recovery for the lenders. This would also reduce litigation in a large number of cases and lead to much faster and quicker resolution as compared to the present scenario of long drawn uncertainty.

In the current environment, public shareholders, particularly small investors are the silent sufferers since any new resolution applicant destroys existing equity value in toto while the shareholders lose everything even otherwise if the company is liquidated. The interest of public shareholders can be safeguarded in a much better manner if the existing promoters is allowed to revive the company where all stakeholders participate in future upside from operations.

**Limited liability to unlimited sorrow:** Concept of limited liability was the lifeblood of industrial development in 20<sup>th</sup> century and any proposal to change the law in a manner

that would punish the promoter for business failure which are at times beyond his control for various external factors is against the principle of natural justice. It would kill the entrepreneurship in the country as people would shy away from setting an industry. The most affected would be the individual entrepreneur, where the promoters are forced to provide personal guarantee and this move would kill such business and discourage new entrepreneurs to take the risk.

**We would be going back in time where foreign businesses and big corporates will be owning everything making entire country slaves or employees for themselves.**

**There is need for an urgent intervention by the government before the Indian entrepreneurial spirit meets an untimely death and invaded by foreign powers.**

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