UNIT 8 MAJOR DEVELOPMENTS IN POST ECONOMIC REFORM PERIOD

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8.0 OBJECTIVES

Having gone through this unit, you will be able to:

- explain the concept of privatisation;
- distinguish between disinvestment and privatisation;
- analyse the hurdles in the way of restructuring of public sector undertakings;
- highlight the pros and cons of public private partnership;
- narrate the suitability of public private partnership;
- discuss the need for insolvency and bankruptcy code (IBC); and
- point out the problems and performances of IBC.

8.1 INTRODUCTION

The economic systems world over have been deregulated and controls that existed in the past have been relaxed in great measure. At the same time, governments have been attempting to open more economic activity to private players– both domestic as well as foreign. Liberalisation, Privatisation and Globalisation (LPG) forms part of a wider reform process, as discussed in the previous unit. The narrative of "Rising India" over the past quarter century describes India's economic rise and, as a consequence of that rise, India's globalisation and integration with rest of the world. Further, there is a growing recognition that India was liberating itself from the historical past.

The turn of the century was when a new narrative about independent India began to take root internationally. India had not only come out of a serious economic crisis in 1991-92, but had landed on its feet. Trade liberalisation, industrial delicensing and decontrol and fiscal stabilisation contributed to an increase in the share of foreign trade and manufacturing output in national income, contributing also to improved prospects for growth. Investors' confidence in the economy got a boost, resulting in a build-up of its growth potential. New firms began to come up and so did new industries. However, the slowing down of the economy in the second decade of this millennium be it due to cyclical or structural factors, has raised questions about India's growth potential and the government's management of the economy. A new narrative can only be built on the foundations of improved economic performance. A return to the earlier growth path is predicated upon altering recent perceptions about India's economic prospects and policies, the political choices made and geopolitical options explored.

The most contentious of all economic reform measures since 1991, is disinvestment. Disinvestment and privatisation have been two policies common to all Central Governments since 1991. The economic reforms initiated in the country provide the policy environment towards public private partnership (PPP) in infrastructure development. Insolvency is a complex subject. Bankruptcy laws accept that business ventures can fail and allow entrepreneurs to get a fresh start. The passage of the Insolvency and Bankruptcy Code in May 2016 was a key reform which is set to alter the relationship between debtors and creditors. Given this backdrop and the more general narrative on India's economic reforms since 1991 discussed earlier, this unit will discuss various facets of three ongoing debates having repercussion on the performance of Indian economy and these are:

i) Privatisation and restructuring of public sector,

ii) Public private partnership, and

iii) Insolvency and bankruptcy code (IBC).

8.2 PRIVATISATION AND RESTRUCTURING OF PUBLIC SECTOR

Privatisation describes a direction of change or a fundamental reordering of claims in a society. Its meaning depends on the point of departure– the public-private balance previously forged in a particular domain. The term 'privatisation' connotes a wide range of ideas. In its narrow sense it is the process of transferring ownership of a business, enterprise, agency, public service or public property from the public

sector (i.e., government) to the private sector. In the wider sense it means government outsourcing of services or functions to private firms. According to V.V. Ramanadham (1989) privatisation is a term that is employed to convey a variety of ideas. The idea that it most prominently suggests is that of 'denationalisation' (in the sense of transferring the ownership of a public enterprise to private hands).

Another idea in vogue is 'liberalisation and deregulation' unleashing forces of competition[1]. The concept of privatisation is, in fact, to be understood, not merely in the structural sense of who owns an enterprise, but in the substantive sense of how far the operations of an enterprise are brought within the discipline of market forces.

8.3 DIFFERENCE BETWEEN DISINVESTMENT AND PRIVATISATION

Though privatisation and disinvestment are terms that are used interchangeably, there is a difference between them with regard to the ownership. Disinvestment may or may not be an outcome of privatisation. When it comes to defining the term, privatisation involves transforming the ownership of a public sector business to the private sector known as a "strategic buyer". In privatisation, full ownership is transferred to the strategic partner. In a broader sense, privatisation refers to transfer of any government function to the private sector including governmental functions like revenue collection and law enforcement.

In disinvestment, the same transformation process happens while retaining 26 per cent or in some cases 51 per cent of share right (i.e. the voting power) with the public sector organisation. Here, the ownership is not transferred to strategic buyer. Divestment is said as the opposite of Investment. Investment means acquisition of certain assets; divestment means the release of assets. A business may be that a particular arm of it is not compatible with its core business and hence may decide to shelve or divest this business. Divestment may be done for various economic or social reasons.

8.3.1 Forms of Privatisation

Various forms of privatisation vary in the extent to which they move ownership, finance, and accountability out of the public sector. The spectrum of alternatives runs from total privatisation (as in government disengagement from some policy domain) to partial privatisation (as in contracting-out or vouchers). Thus, privatisation may include policies anywhere along this spectrum; however, the implications of privatisation vary with its degree. According to Ramanadhan (1989) privatisation cover three sets of approaches like ownership, organisational, and operational measures. It is important to remember that all these measures more often are equated with transfer of ownership and transfer of managerial and operational control to private hands.

[1] Competition plays a key role in ensuring productive, efficient, innovative and responsive markets. It ensures availability of 'goods' and 'services' of acceptable quality at affordable price to the consumers. Competition law, also referred to as anti-trust law, aims at promoting or maintaining market competition by regulating anti-competitive conduct. The first Indian competition law was the Monopolies and Restrictive Trade Practices (MRTP) Act, enacted in 1969 to encourage fair play and fair deal in the market besides promoting healthy competition. In line with the international trend and to cope with changing realities introduced by the reforms of 1990s, India reviewed the MRTP Act, 1969, and enacted the Competition Act, 2002.

8.4 NEED FOR PRIVATISATION

The industrial policy of July 1991 is considered as a precursor of economic reforms which brought a change in the approach towards Public Sector Undertakings (PSUs). In the affairs of the public sector, it has been a game of politics throughout, and still is, despite the talk of structural adjustments and economic reforms. Some of the important factors leading to the need for privatisation are as under:

i) PSUs in India have no autonomy. As a result, a culture has developed that their major clientele are not the customers who pay for their services, but the ministers and officials of their controlling ministries.

ii) PSUs have many objectives imposed on them, some of which affect their efficiency and profitability. In fact, PSUs suffer from multiple principals and multiple objectives. As a rule, interventions through PSUs are both inefficient and costly. India needs privatisation to improve efficiency and to liquidate recurring liabilities for the government.

iii) Ownership should not matter to performance. That it does in India is a reflection on the poor understanding of business by the bureaucracy. It also indicates their lack of accountability. Poor performance only impacts on government budgets, not on individual officials.

iv) It is important to note that there are limitations being government as owner. Rao (1998) has emphasised that "the enterprise comes under a Ministry of Government, and is subject to scrutiny by Parliament. The Government of the party in power exercises ownership through the Minister while the permanent civil service translates the will of the Government through the management of the enterprises. But the Minister and civil servant are temporary occupants of the owner's chairs because of frequent changes in their portfolios. There are controls exercised on the enterprise at all levels."

v) "Public sector managers, who perform better in the liberated circumstances of private sector enterprises, have been known to complain that they are crippled by various regulations in a public sector entity. Unless a radical transformation is made to liberate the public sector manager from multiple scrutiny by organs of investigation and vigilance, a level playing field cannot be established between the public sector and the private sector" (Venkitaramanan, 2005).

Privatisation per se does not lead to efficiency. Decontrol is probably a more important principle than privatisation; and many of the supposed positive attributes of privatisation can be imparted to public enterprises. In India, wholesale transfer of assets to private sector both on grounds of efficiency and equity is not easily acceptable. On the other hand, organisational efficiency requires a different approach. The framework of principal-agent relationship in private ownership has an advantage over public ownership. In the sense that both the principal and the agent have stakes in the efficient functioning of the enterprise and there is unanimity on the objective function to be maximised.

Check You Progress 1

1) Provide wider meaning of privatisation.

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2) Distinguish between privatisation and disinvestment.

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3) What are the different forms of privatisation?

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4) Point out the need for privatisation in India.

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8.5 DISINVESTMENT IN INDIA

Disinvestment in public enterprises was proposed as a policy option in the Industrial Policy Statement of July 1991. The Government will divest its equity in piecemeal. Reforms in public sector undertakings (PSUs) have taken many forms, ranging from privatisation to subjecting them to a hard budget constraint, introducing competition to toning up financial sector. India's disinvestment has its roots in economic compulsion. Disinvestment can cover various forms. Which forms and which units are chosen at any time is guided by market conditions and the desire to get the maximum value for currently owned assets. This is a matter of careful examination and surveillance of much strategic thinking. For framing proper strategies of disinvestment of shares of PSUs, a committee under the

chairmanship of Dr C. Rangarajan was appointed in 1993 which recommended disinvesting up to 49 per cent of PSUs equity for industries explicitly reserved for the public sector and over 74 per cent in other industries. But the then Government did not take any decision on the Committee's recommendations.

The Government constituted a five-member Public Sector Disinvestment Commission under the Chairmanship of Shri. G.V. Ramkrishna in August 1994 for drawing a long-term disinvestment programme for the PSUs referred to the Commission. The Commission submitted a dozen reports suggesting a slew of measures including strategic sale, equity sale and closure, besides making general recommendations on 58 PSUs. However, in November 1999, the Commission was wound up and a Department of Investment and Public Asset Management was created under Ministry of Finance.

Successive governments since 1991 declared their intent to disinvest but little progress has been made over the years. The record of performance of Government on disinvestment has been uniformly poor. The present process of disinvestment of PSUs is indiscriminate, unplanned and lacks clear policy on the government's part. According to department of investment and public asset management, since the inception of the process of disinvestment in 1991-92 to January 2020 an amount of Rs 3,54,307.75 have been mobilised through disinvestment proceeds.

The process of disinvestment has evolved from public offering of shares to strategic sale of equity to select partners to complete asset selling. The strategic sale method confers a better valuation and paves the way for a technological up-gradation of the target company. The main disadvantage of the sale of minority stakes has been lower realisation as management control is not transferred. Minority sales also give the impression that the main objective of the government is to raise funds for reducing its fiscal deficit, and not to improve performance or governance. Yet, because the share offer route is politically more acceptable, all governments have relied on it.

8.6 PROBLEMS RELATED TO DISINVESTMENT PROCESS/MODES

Controversies abound with regard to the mode of disinvestment. Ultimately, the issue relating to disinvestment revolve around three questions– why, how and how much. Dr G. S. Gupta (1998) has pointed out that the question of how to privatise raises several issues:

i) Which approach is the best for which unit?

ii) Are various approaches substitutes/complementary?

iii) How to motivate politicians/bureaucrats/employees/ towards privatisation?

iv) When to sell assets/equity?

v) How to value assets/equity?

vi) What proportion of equity to sell? Whom to sell; retail investors, multinational, expatriates, NRIs?

vii) Does privatisation fetch sustainable revenue?

viii) How to close in the absence of exit policy/voluntary retirement scheme?

ix) How to sequence privatisation?

x) Would disinvestment crowd out private investment?

There is no definite answer to any of these questions. These problems are very complex and it is not possible to find out an easy way out.

Abhijit Roy (2002) has observed that Indian opinion seems to be divided in two camps. The privatisers say that "the government has no business to be in business" hence divestment is the only way out. The other camp holds the view that the government should not hand over the family silver to crooks and charlatans who dominate Indian businesses. Nor do they want the government companies to be handed over to the MNCs. Whatever the merits of the arguments, one cannot ignore either of these two opinions. One does not have to be dogmatic in one's approach. The goal should be to achieve a vibrant corporate sector in the medium term consisting of various types of ownership patterns. E. A. S. Sarma (2004) has rightly observed that the disinvestment policies of the successive government remained hazy.

Lessons of privatisation in other countries and the Indian experience support adoption of a pragmatic approach to privatisation, rather than its total rejection. It is clear that privatisation has not been very popular. PSUs would have to be freed from control by ministries. And this freedom would have to be structured institutionally. There is the need for distancing government from control and management over public enterprises to enable them to run more efficiently. Autonomy must be the object, not raising revenues. Ownership must not mean interference in governance and management of companies by government representatives.

8.7 CONDITIONS FOR SUCCESS OF PRIVATISATION POLICY

The mixed empirical evidence on privatisation is warning against sweeping generalisations about the impact of privatisation. Dr Mahbub Ul Haq (the man behind Human Development Reports published by of the United Nations Development Programme) has cautioned economies privatising their public sector, as part of a structural adjustment and economic reform programme, must bear in mind that they do not commit the "seven sins of privatisation". The seven sins of privatisation are:

i) confused objectives,

ii) lack of transparency,

iii) concentration of assets,

iv) lack of competition,

v) a poor financial strategy,

vi) the dominance of fiscal objective of financing deficits, and

vii) lack of political consensus.

Revenue maximisation should not be the objective of privatisation. Efficiency and equity are the relevant objectives and the success of privatisation should be evaluated against these objectives. Long-term efficiency gains are more important

than short-term revenue gains. The lack of transparency in the privatisation process is counter-productive and facilitates abuse. Often privatisation has become a way of enriching a minority, resulting in gains for private fronts. This exposes privatisation to political controversy. Privatisation should not simply imply transfer of rents from the public to the private sector. Privatisation should not result in a greater concentration of assets. Rather, the process of divestment of public equity must ensure greater competition through more dispersed ownership. Privatisation cannot be based on an unrealistic labour strategy. The 'golden handshake' should not exceed the sale value of the assets being privatized. The first requirement after privatisation of an enterprise is to retire a country's debt, and relieve future generation from this burden. Privatisation should not be carried through executive orders but through the Parliament and after an open debate which facilitates a consensus. Executive orders can be reversed and this creates uncertainty, often sub-optimal reaslisation of proceeds from privatisation.

The Eleventh Finance Commission (2000) has noted in its report that major structural reforms initiated in the nineties have virtually by-passed the PSUs. It points out that PSUs should be freed from the shackles of ministries, and their management has to be autonomous, professional, accountable, transparent and durable for a good length of time. It is important to note that the centre's efforts at privatisation of the PSUs have not gone beyond a fractional disinvestment of a few profit-making PSUs. There has been no uniformity of views either among the political parties or among the economists about the necessity for privatisation. "Contrary to popular supposition, neither the theory nor the empirical evidence on privatisation provides unqualified support for the belief that privatisation leads to outcomes superior to those under public ownership" (T T Ram Mohan, 2001).

Privatisation of public sector units has never been an easy task. Across the globe, countries have tackled the hurdles in very different ways. But their governments have weighed the good it could deliver with the odds it may bring and evened the two out amicably. The privatisation process entails a very careful analysis of specific circumstances including the specific setting of an enterprise and larger socio-economic context. All that can be done is to build and sustain pressure on the government to get out of activities with which it ought not to be involved, and concentrate on those with which it should, like education, health, the supply of drinking water and other essential services. Only then will a perspective emerge. The scales seem to tilt in favour of the disinvestment process, no matter how much is the protest from political and vested quarters. After all, disinvestment has not been an easy job for any country in the world. Privatisation is not an end in itself. It is a means of ensuring the efficiency of PSUs and the markets they operate in. Government may have the right intentions, but it needs a better method to accommodate the realities of a noisy political economy.

Check Your Progress 2

1) Trace the evolution of disinvestment policy in India.

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2) Highlight the problems associated with modes of disinvestment.

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3) Narrate the factors leading to success of Privatisation policy.

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8.8 PUBLIC PRIVATE PARTNERSHIP (PPP)

The expression PPP is a widely used concept world over but is often not clearly defined. There is no single accepted international definition of what a PPP is (World Bank, 2006). A public-private partnership, or P3, is a contract between a governmental body and a private entity, with the goal of providing some public benefit, either an asset or a service. Public-private partnerships typically are long-term and involve large corporations on the private side. A key element of these contracts is that the private party must take on a significant portion of the risk because the contractually specified remuneration – how much the private party receives for its participation – typically depends on performance. In the Indian context, the term PPP is used very loosely. According to the National Public Private Partnership Policy 2011, "a Public Private Partnership (PPP) means an arrangement between the government/statutory entity/government owned entity on one side and a private sector entity on the other, for the provision of public assets and/or public services, through investments being made and/or management being undertaken by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the public entity and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the public entity or its representative".

Since the need for infrastructural development in India is on the rise, the public private partnership is the way to go forward as it provides innovation and diversity, higher productivity, efficient and cost-effective delivery of projects. Facing constraints on public resources and fiscal space has brought about renewed interest in PPP. With the announcement of industrial policy of July 1991, a new wave for PPP was felt and it was decided to allow private participation in the power sector which opened up the doors for independent power producers. The National Highways Act, 1956 was altered in 1995 to empower private support. In 1994, through a focused offering process, licenses were conceded to eight-cell cellular telephone utility administrators in four metro urban areas and 14 administrators in 18 state circles. The overarching objectives of such partnerships are:

i) Harness private sector efficiencies in asset creation, maintenance and service delivery;

ii) Provide focus on life cycle approach for development of a project, involving asset creation and maintenance over its life cycle;

iii) Create opportunities to bring in innovation and technological improvements; and,

iv) Enable affordable and improved services to the users in a responsible and sustainable manner.

In short, the main objectives of pursuing PPP model in India relate to the following:

i) Expansion and improved infrastructure

ii) Risk sharing.

iii) Optimum allocation of resources.

iv) Innovations.

v) Aid in growth of other sectors.

(vi) The catalyst for the economy.

vii) More employment generation.

viii) Improves the image of the country.

ix) Attract FDI.

PPP Cell under Department of Economic Affairs (DEA): For looking at various aspects of PPP, the PPP cell was set up in 2006 in the Department of Economic Affairs (DEA), Ministry of Finance which acts as the Secretariat for Public Private Partnership Appraisal Committee (PPPAC), Empowered Committee (EC), and Empowered Institution (EI) for the projects proposed for financial support through Viability Gap Fund (VGF). The PPP Cell is responsible for policy level matters concerning PPPs, including policies, schemes, programmes, model concession agreements and capacity building. The PPP Cell is also responsible for matters and proposals relating to clearance by PPPAC, scheme for financial support to PPPs in infrastructure (VGF Scheme) and India Infrastructure Project Development Fund (IIPDF).

Check Your Progress 3

1) Provide meaning of PPP.

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2) Explain the need for PPP in India?

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3) What is the administrative machinery for PPP in India?

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8.9 PPP MODELS IN INDIA

In India, PPPs take a wide range of forms varying in purpose, involvement of the private entity, legal structure and risk-sharing. The private sector participation in the infrastructure building have taken place broadly through corporatisation of existing PSUs (e.g. GAIL, ONGC, IOC, etc.), greenfield investment for development of new projects, PPP in the form of BOT or BOOT model in the road sector and concession agreements with the private sector such as rehabilitate, operate, and transfer. India majorly follows 3 types of PPP models out of many models available. They are:

i) Hybrid Annuity Model (HAM)

ii) Build-Operate-Transfer (BOT)

iii) Engineer-Procure-Construct (EPC)

HAM is a mixture of BOT and EPC where the financing, risks, operations, etc. are distributed between Government and a private partner. The following table would show the difference in these models:

	BOT	**EPC**	**HAM**
Risk	Private	Public	Private (60 per cent) Public (40 per cent)
Finance	Private	Public	Private (60 per cent) Public (40 per cent)
Operations and Management	Private	Public	Private
Revenue	Private	Public	Public

Source: https://www.jatinverma.org/public-private-partnership-in-india)

i) BOT (build operate transfer) models used for two-thirds of the total PPP projects in India. User-fee based BOT model widely used in medium- to large-scale projects, especially in energy and transport (road, ports and airports). Annuity-based BOT model commonly used in sectors/projects not meant for cost recovery by levying a fee on sectors such as health and education.

ii) Modified design-build (turnkey) contracts yield time and cost saving benefits; also enable efficient risk-sharing and improve quality.

iii) Performance- based management/ maintenance contracts suitable for sectors (water supply, sanitation, solid waste management and road maintenance) constrained by the availability of economic resources to improve efficiency.

8.9.1 Government Incentives for PPPs

The Government has facilitated the PPP sector by offering:

i) **Viability Gap Funding (VGF):** Viability Gap Funding of up to 40 per cent of the cost of the project can be accessed in the form of a capital grant.

ii) **India Infrastructure Project Development Fund (IIPDF):** It helps the Central and the State Governments and local bodies through financial support for project development activities (feasibility reports, project structuring etc.) for PPP projects.

iii) **India Infrastructure Finance Company Ltd (IIFCL):** It provides long-term debt for financing infrastructure projects that typically involve long gestation periods since debt finance for such projects should be sufficient to meet the requirements.

iv) **Foreign Direct Investment (FDI):** Up to 100 per cent FDI in equity of special purpose vehicles (SPVs) in the PPP sector is allowed on the automatic route for most sectors.

The proposals shall include the requisite information necessary for satisfying the eligibility criteria.

8.10 CHALLENGES OF PPP

Despite the success of PPP model in India, there is ample scope to improve its working. Along with the advantages of the PPP projects, the negatives have also surfaced in the forms of various bottlenecks and challenges. “The Indian public sector suffers from peculiarly Indian constraints. Political interference in recruitment, competitive trade union activity (witness the posters in every railway station), rigidities on salaries and writs in courts on service matters, reduce the efficiency of personnel management in the public sector. Activities of oversight agencies – vigilance, comptroller and auditor general, etc– cause extreme risk aversion in decision-making, reducing the efficiency of procurement and operational decisions” (Somanathan and Natarajan, 2019).

In addition to above constraints, Gautam Ray (2014), has observed that “despite progress and bright future prospects, investors continue to face many challenges and perceive many hurdles. At the same time, project authorities are finding it difficult to implement initiatives that are afflicted by higher cost, inflation and/ or unrealistic estimates of streams of expected revenue, and some approved projects get delayed or abandoned because investors cannot secure financial closure due to their unrealistically aggressive bids. Litigation and disputes over land acquisition and other issues present further problems. Perhaps the most important challenge before state governments is to develop well-designed PPP projects in social infrastructure so that private investors, including NGOs, are sufficiently motivated to invest”.

To develop the PPP projects in India, the Kelkar Committee (2015) recommended that:

i) PPPs should not be used by the government to evade its responsibility for service delivery to citizens.

ii) This model should be adopted only after checking its viability for a project, in terms of costs and risks. PPP structures should not be adopted for very small projects, since the benefits are not commensurate with the costs.

iii) PPP must not be a short cut only to save money or bridge fiscal gaps or transfer risks; it should be used to improve service quality or bring efficiency improvements.

iv) The prevention of Corruption Act, 1988 should be amended to distinguish between genuine errors in decision making and acts of corruption by public servants.

The Committee has emphasised that India's success in deploying PPPs as an important instrument for creating infrastructure will depend on a change in attitude and in the mind-set of all authorities dealing with PPPs, including public agencies partnering with the private sector, government departments supervising PPPs, and auditing and legislative institutions providing oversight of PPPs. It is pertinent to note that PPPs have contributed towards the growth and development of the Indian economy in multiple ways. Combining the professionalism of the corporate sector with the welfare objectives of the state has resulted in projects which are known for their world class facilities and advanced amenities. For example, several airports including Mumbai airport and the T3 of Delhi airport are built on the PPP model. The PPP has seen several successful infrastructural projects over the past decade.

It has rightly been observed that "selection of right PPP model for a right project at a right time through realistic planning would go a long way in providing meaningful and hassle-free infrastructure development, which ultimately would increase the infrastructure standards and thereby sustain the overall macroeconomic developments of the country" (Lakshmanan, 2008).

Check Your Progress 4

1) Discuss the different models of PPP adopted in India.

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2) What incentives government provide for having PPP in India?

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3) Describe the challenges and how to go forward with PPP in India?

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8.11 INSOLVENCY AND BANKRUPTCY CODE (IBC)

India's financial distress resolution mechanism is broken. Companies that fall into hard times spend six or eight years trying to resolve the situation. Banks are saddled with massive amounts of non-performing loans that are a drain on their resources and also affect their willingness to lend to new and deserving projects. Ultimately, the honest and successful companies and individuals that borrow from the banks pay for these inefficiencies in terms of higher interest rates. Over the past 20 years, there have been a number of attempts to reform India's insolvency regime. None of them have been fully effective. While one can find a number of specific reasons for their failure, the one overarching reason (at least in the case of laws) is the lack of legal infrastructure to effectively implement the laws. Our courts are overburdened, understaffed, and lack basic physical infrastructure.

In late 2014, Ministry of Finance setup the Bankruptcy Legislative Reforms Committee (BLRC), under the chairmanship of Dr T K Viswanathan (former Union law secretary), with the objective of building a full-fledged bankruptcy code. Based on the committee's recommendations, the government introduced the "Insolvency and Bankruptcy Code". After half-a-century of efforts and nine committees, insolvency in India has become easier. The IBC 2016, addresses all these endeavours to prevent insolvency, provides a market determined and time-bound mechanism for resolution of insolvency, wherever possible, along with facilitators for quick and effective resolution, and promotes ease of exit, wherever required.

In this context, it is well to remember that the economy witnessed freedom of entry in the 1990s and freedom to compete in the 2000s. The IBC Code of 2016 provides the ultimate economic freedom, freedom to exit, and a mechanism to address honest business failures..

18.12 CONCEPT AND IMPORTANCE OF IBC

Bankruptcy is a legal status usually imposed by a Court, on a firm or individual unable to meet debt obligations. As all businesses cannot succeed, it is perfectly normal for some businesses to fail, making it important to emphasise on corrective action. India's new Bankruptcy Code– "Insolvency and Bankruptcy Code, 2016" attempts to create a formal insolvency resolution process (IRP) for businesses, either by coming up with a viable survival mechanism or by ensuring their speedy liquidation. The code makes a clear distinction between insolvency and bankruptcy. The former is a short-term inability to meet liabilities during the

normal course of business. The latter is a longer-term view on the business. The code envisages a new regulator– the Insolvency and Bankruptcy Board of India. The implementation of the IBC has been one of the most important reforms in recent years. Banks and other creditors can now take the defaulting company to the National Company Law Tribunal to initiate insolvency proceedings. There is now a real chance that promoters can lose control and are no longer in a position to take creditors for a ride.

8.12.1 Objectives of IBC

The objectives of IBC are:

i) to promote entrepreneurship,

ii) availability of credit,

iii) balancing interests of all stakeholders by consolidating and amending laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and for maximisation of value of assets of such persons and matters connected therewith or incidental thereto.

iv) to simplify and expedite the Insolvency and Bankruptcy Proceedings in India.

v) to protect the interest of creditors including stakeholders in a company.

8.12.2 The Insolvency and Bankruptcy Code Ecosystem

Following are the components of IBC ecosystem:

i) National Company Law Tribunal (NCLT) – The adjudicating authority (AA), has jurisdiction over companies, other limited liability entities.

ii) Debt Recovery Tribunal (DRT) has jurisdiction over individuals and partnership firms other than Limited Liability Partnerships.

iii) The Insolvency and Bankruptcy Board of India (IBBI) – apex body for promoting transparency and governance in the administration of the IBC; will be involved in setting up the infrastructure and accrediting IPs (Insolvency Professionals (IPs) & IUs (Information Utilities).

iv) It has 10 members from Ministry of Finance, Law, and RBI.

v) Information Utilities (IUs) – a centralised repository of financial and credit information of borrowers; would accept, store, authenticate and provide access to financial data provided by creditors.

vi) IPs- persons enrolled with IPA (Insolvency professional agency (IPA) and regulated by Board and IPA will conduct resolution process; it will act as Liquidator/ bankruptcy trustee; they are appointed by creditors and override the powers of the board of directors.

vii) IPs have the power to furnish performance bonds equal to assets of the company under insolvency resolutions

viii) Adjudicating authority (AA) – would be the NCLT for corporate insolvency; to entertain or dispose of any insolvency application, approve/ reject resolution plans, decide in respect of claims or matters of law/ facts thereof.

8.12.3 Salient Features of IBC

The following are the salient features of the IBC:

i) IBC proposes a paradigm shift from the existing "debtor in possession" to a "creditor in control" regime. An impartial law respecting rights of all creditors by acknowledging that all classes of creditors to play a vital role in the insolvency process. However, the 'secured lenders' will have significant influence over the reorganisation process.

ii) The code aims to resolve insolvencies in a strict time-bound manner – the evaluation and viability determination must be completed within 180 days. Moratorium period of 180 days (extendable up to 270 days) for the Company. For start-ups and small companies the resolution time period is 90 days which can be extended by 45 days.

iii) Introduce a qualified insolvency professional (IP) as intermediaries to oversee the Process. Insolvency professionals will assist in the resolution, liquidation and bankruptcy proceedings envisaged in the code. This will help in preserving value and time.

iv) Provides for the setting up of "Insolvency and Bankruptcy Board of India" (IBBI) to regulate professionals/agencies dealing with insolvency and informational utilities.

v) Emphasis on symmetry of information between creditors and debtors by ensuring availability and access to essential information to all creditors by setting up of Information Utilities as a depository of financial information.

vi) The code allows the corporate debtor itself to initiate the insolvency–resolution process once it has defaulted on a debt. Also, operational creditors (including the Centre, State governments and local authorities) are permitted to initiate the resolution process.

The Code has a clear-cut grievance resolution mechanism for various stakeholders involved in insolvency resolution. Only the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and the Supreme Court have the jurisdiction to deal with any appeal concerning the Code. At its heart, it suggests a commercial resolution without burdening the courts excessively. It would result in a better business environment and ease in debt rising.

8.12.4 Working of IBC

The law heralds a new era in how India's economy resolves bad debts and inconsistent treatment in resolving cases. The threat of IBC is forcing debtors to pay up, as operational creditors have recovered more than Rs. 1 lakh crore even before their insolvency applications were admitted by NCLTs.

"In over three years of the Insolvency and Bankruptcy Code, the number of bankrupt companies liquidated under the regime has far exceeded the number of corporate resolutions, by nearly four times. According to the data released by the Insolvency and Bankruptcy Board of India (IBBI), while 156 of the cases admitted under the Corporate Insolvency Resolution Process (CIRP) have been resolved

till September 2019, the liquidation process has started in as many as 587 cases. Thus, IBC has liquidated many more companies than it has resolved.

It should be noted that IBC has provided creditors and other stakeholders the ammunition to obtain the maximum value for stressed assets by shifting the balance of power from debtors. The IBC, undoubtedly, since the time of its enactment has evolved considerably. According to the World Bank, before IBC, the time taken to resolve stressed loans was 4.3 years and recovery rate was 26 per cent for financial creditors. There has been a marked improvement in the recovery process which is already leading to billions of dollars being invested in the country due to the protection of creditor rights.

In December 2019 the Union cabinet approved fresh amendments to the Insolvency and Bankruptcy Code (IBC) aimed at strengthening its functioning. The amendments seek to ring-fence assets of companies from offences committed by the previous management or promoters. The government should now step up its efforts to ensure that the promise of speedy resolution, one of the most appealing aspects of the IBC, is delivered upon.

A lot has been said and written on the IBC. Implementation of the IBC is a real challenge. This is an innovative law awaiting correct execution. In 2019, with the Supreme Court upholding the Insolvency and Bankruptcy Code (IBC) in its entirety, the resolution process will move faster now. The success of the ambitious IBC is dependent on its institutions like the regulator, the adjudicating authority and the professionals involved. Nevertheless, IBC 2016 is an evolving legislation, still being interpreted by courts and being constantly amended to harmonise IBC with our related legal policy.

Check Your Progress 5

1) The concept of IBC adopted in India. Highlight the importance of IBC.

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2) Point out the objectives and ecosystem of IBC.

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3) Discuss the working of IBC.

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8.13 LET US SUM UP

Public sector enterprises were considered necessary when they came into existence. The current thinking is that the reasons, howsoever plausible in the past, are no longer valid for the continued existence of the public sector. Disinvestment in public sector enterprises (PSEs) was proposed as a policy option during the initial phase of economic liberalisation in 1991. Privatisation means transferring control to a private party. This can be done with or without transferring ownership. Disinvestment, which is a form of ownership transfer, comes under the umbrella of privatisation. Disinvestment means no transfer of control even if public shareholding is diluted. The objectives of privatisation are: greater efficiency, revealing the true and full cost of the service provided, promotion of technological advancement, development of capital markets, broadening the wealth and achieving widespread private ownerships in society, raising extra-revenues for the government, and reducing the power of public employee unions.

The public Private Partnership (PPP) is an agreement between the government and the private sector for the purpose of provisioning of public services or infrastructure. With a common goal in mind the public and the private sector bring on their experiences and strengths resulting in the accomplishment of mutual objectives. Using the finances of the private firms to complete the PPP ventures has led to conservation of national and governmental resources. The PPPs are ensuring the effective utilisation of state assets in a manner that is productive as well as profitable. Infrastructure created using these partnerships is of a superior quality.

India lacked an ecosystem that encouraged dismantling of companies and sale of its divisions. Insolvency and Bankruptcy Code, 2016 is considered as one of the biggest insolvency reforms in the economic history of India. This was enacted for reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time- bound manner for maximisation of the value of assets of such persons. In order to, realise the benefits of IBC, the time taken to find and implement resolutions has to come down drastically.

8.14 TERM-END EXERCISES

1) Explain the concept of privatisation. Provide an overview of the reasons for privatisation.

2) What are the methods of privatisation? Which methods are being followed in India? Examine the problems and prospects of privatisation in India.

3) What is disinvestment? What is the difference between privatisation and disinvestment? What conditions are needed for making disinvestment policy a success?

4) What do you mean by the concept of Public Private Partnership (PPP)? Which sector is most suitable for PPP policy?

5) What policy is being followed by the government of India regarding PPP? How has India benefited from PPP collaboration? Give concrete examples.

6) What precautions are needed for going to PPP agreement? Explain the challenges being faced by PPP projects in India?

7) Explain the concept of Insolvency and Bankruptcy Code (IBC). How can you distinguish between Insolvency and Bankruptcy? What factors propelled the enactment of IBC in India?

8) Describe the objectives, importance and salient features of IBC in India. Which are the components of eco-system to implement the IBC?

9) Discuss the working of IBC in India. What challenges are being encountered by IBC? How does government trying to meet such challenges?

8.15 KEY WORDS

Autonomy : Autonomy is the capacity to make an informed and uncoerced decision. Autonomous organisations or institutions are independent or self-governing.

Corporatisation : Corporatisation refers to the restructuring or transformation of a state-owned asset or organisation into a corporation. These organizations typically have a board of directors, management, and shareholders. However, unlike publicly traded companies, the government is the company's only shareholder, and the shares in the company are not publicly traded.

Cyclical Slowdown of Economy : In simple words, a cyclical economic slowdown is a part of the business cycle having its peaks and troughs. The economy will be moving in cycles with periods of peak performance followed by a downturn and then a trough of low activity. These are expected to be short-term problems that could be addressed with an adequate mix of fiscal and monetary policies.

De-licensing : De-licensing refers to the policy of opening the economy and abolishing government control by removing the earlier restrictions and licenses.

Fiscal Stabilisation : Foremost among the techniques of stabilisation is fiscal policy. Fiscal policy as a tool of economic stability, however, has received its due importance under the influence of Keynesian

economies only since the depression years of the 1930s. In India the commonly used term is "fiscal consolidation" which refers to a process where government's fiscal health is getting improved and is indicated by reduced fiscal deficit. Fiscal consolidation is a reduction in the underlying fiscal deficit. It is not aimed at eliminating fiscal debt.

Golden Handshake (also known as VRS in India) : *Golden Handshake*, is an independent decision of employee to end his employment based on some decided agreement or contract, so as to terminate the legal relationship of employer – employee.

Structural Slowdown of Economy : A structural slowdown is a more deep-rooted phenomenon that occurs due to a one-off shift from an existing paradigm. The changes, which last over a long-term, are driven by disruptive technologies, changing demographics, and/or change in consumer behaviour. In such a scenario, a monetary and fiscal stimulus won't be enough to revive the economy. Fixing such problems would require the government to undertake some structural policies. The best example in this regard would be the reforms that were carried out to address the crisis in 1991.

8.16 REFERENCES

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8.17 ANSWERS OR HINTS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) See Section 8.2
2) See Section 8.3
3) See Sub- section 8.3.1
4) See Section 8.4

Check Your Progress 2

1) See Section 8.5
2) See Section 8.6
3) See Section 8.7

Check Your Progress 3

1) See Section 8.8
2) See Section 8.8
3) See Section 8.8

Check Your Progress 4

1) See Section 8.9
2) See Sub- section 8.9.1
3) See Sub- sections 8.10

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Check Your Progress 5

1) See Section 8.12
2) See Sub-sections 8.12.1 and 8.12.2
3) See Sub-sections 8.12.4