

## TOPIC 1

# Amendments to the Insolvency and Bankruptcy Code

### Relevancy

- GS Prelims, GS Mains paper II
- Polity, governance, economy
- Insolvency and bankruptcy code
- Growing NPAs in India

### Recently

- A year ago the Insolvency and Bankruptcy Code came into force with the goal of easing the resolution of corporate insolvency.
- This year the Central government has passed an ordinance that significantly amends the original law.

### Why amendments to the law?

- The aim of the changes is to strengthen further the insolvency resolution process.
- It has been considered necessary to provide for prohibition of certain persons from submitting a resolution plan, who, on account of their antecedents, may adversely impact the credibility of the processes.
- The ordinance specifies the categories of persons who are deemed ineligible to participate in resolving a corporate entity's debt once it has been put under the process of insolvency resolution by creditors.

### Concerns regarding the changes

- The category of people barred is too broad and risks the very objectives of the original code.
- It is important to remember here that the IBC is not intended to serve as a mere instrument of liquidation.
- Instead, it is to provide an enabling legal framework for the "reorganisation and insolvency resolution of corporate persons...in a time bound manner for maximisation of value of assets of such persons".



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- It is to promote entrepreneurship majorly among other goals.
- It has included promoters and those in management whose loan accounts are classified as non-performing assets for one year or more, as well as any person disqualified to act as a director under the Companies Act.
- Hence the amendment risks becoming an instrument of blunt force that hurts more than it helps.
- Policymakers and central bankers have often pointed out that not all bad loans are a result of mala fide intent on the borrower's part.
- Specifically, in cases where companies have ended up struggling to service debt as a result of unpredictable external factors that adversely impacted their operations and financials.
- Barring the promoters of such firms from a chance to restructure and turnaround the business, merely because the loans have turned sour, is unfair to both the entrepreneur and the enterprise itself.
- For example steel companies were among the worst hit in the wake of the global downturn in commodity prices and depressed demand.
- It has been reported that the promoters of some of these debt-laden steelmakers were considering participating in bids to restructure the debt and businesses and hoping to run them again.

### Conclusion

- The amendment might have made a hasty decision in widening the scope and definition of those it considers ineligible to participate in the resolution process.
- It is seen as a wrong move in making the amendments retrospective to cover even those cases already referred to the National Company Law Tribunal.

## TOPIC 2

### Recurrent floods in Northeast India

#### Relevancy

- GS Prelims, GS Mains paper III
- Environment
- Floods in Assam, Northeast
- Brahmaputra floods
- Reasons, mitigation

#### Introduction

- The monsoons every year lead to the overflowing of the Brahmaputra and its tributaries.
- It results in floods impacting lakhs of people across almost all the districts in the three states of Northeast i.e. Assam, Arunachal Pradesh and Manipur.
- Almost all of Kaziranga, Nameri and Pobitora national parks in Assam have been inundated.

#### Reasons for recurrent flooding

- **Silting of the river:**
  - The riverbed has risen as the mountains shook.
  - The earlier stable course of the river has become a constantly shifting one eroding the banks.
  - This especially increases the amount of silt carried by the river and its tributaries.
  - The silt gets deposited on the banks downstream and on the riverbed.
  - Due to this heavy deposition, the river "frequently changes its course with the main channel flowing into multiple channels" hitting the river bank causing further erosion.
  - The riverbed area of the Brahmaputra has increased by more than 50 per cent through erosion since the Assam quake.



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- **Age old embankments:**
  - One of the reasons Brahmaputra's water spills over so frequently is its ageing embankments.
  - These were constructed based on the 1954 recommendations of the National Flood Commission of India.
  - The most recent embankments are 25 years old.
  - Also, most embankments are used as roads by villagers, traffic on which further deteriorates the already worn and torn embankments.
- **Destruction of wetlands:**
  - Wetlands act as reservoirs and rejuvenating them before monsoon can help in mitigating flood.
  - Assam is home to more than 3,000 wetlands and many varieties of flora and fauna.
  - The permanent destruction of wetlands in the State has also been contributing to the deluge.
  - Most of these wetlands are in derelict condition mainly due to human-induced factors such as encroachment for agriculture or infrastructure development.
- **Effects of Climate Change:**
  - Climate change is resulting in more frequent and severe floods.
  - There is a risk of glaciers melting, leading to flash floods.
  - As the economy of Assam is largely dependent on natural resources, there will be direct effects on agriculture, forests and on the livelihood of its people.
  - During floods, water becomes contaminated, and it will lead to increasing the scarcity of freshwater, which is a constant problem in summer.
  - The predicted increase in average temperature and decrease in the number of rainy days due to climate change will further stress water resources.
  - Also heavier rainfall replacing continuous low or normal rainfall during monsoon might lead to flash floods in low-lying areas.
  - This will also reduce the groundwater recharge.
- **Other causes:**
  - Landslides and increasing topsoil erosion in the river's catchment areas further add to the river's sediments.

## Mitigation strategy

- **De-silting of river:**
  - Checking embankments before monsoon should be done as we never know where it will be breached.
  - Government should make efforts to deepen the Brahmaputra.
  - It could use the harvested silt to construct the 725-km Brahmaputra Expressway along both banks of the river.
  - It will not only improve the water-carrying capacity of the Brahmaputra, but also make the river navigable for bigger cargo ships.
- **Multi-disciplinary approach:**
  - To mitigate floods, any potential practical solution should be based on an integrated, multidisciplinary basin management plan.
  - It should focus on water and soil conservation together with geo-environmental, eco-biological and socio-cultural integrity of the basin.
  - The basin management approach is essential in view of the interstate as well as international character of most of the tributaries and the mainstream.
- **Disaster forecasts:**
  - More accurate and decentralised forecasts of rain can help in improving preparedness.
  - Weather reports should be made available on district level and should be accessible to public.
  - Information should be available in local languages and warnings should be issued beforehand.
  - Water flow information shared by China on the Brahmaputra with India should also be shared with the public.
  - It will help in understanding the river better and therefore help people better prepare for floods.
- **Research:**
  - Studying the river and the impact of climate change is also must to understand why the state gets flooded every year.

## Topic 3

# Indian law on Geographical Indications and its shortcomings

### Relevancy

- GS Prelims, GS Mains paper III
- Geographical indications, TRIPS
- Intellectual property rights
- Case of Assam, Case of turmeric

### Relevance of Geographical Indications

- The law of Geographical Indications (GIs) is linked to the fact that is the quality of a product is essentially attributable to the territory where the product originates from.
- GIs support local production of the area.
- These are an important economic tool for the uplift of rural and tribal communities.
- Unlike other Intellectual Property Rights (IPRs) which guarantee the protection of individual interest, GI is a collective right.
- If their products qualify producers can use the collective GI mark.

### Provisions by TRIPS

- TRIPS only provides a minimum standard of protection.
- There is no insistence on a particular framework for protection of GI.
- In fact the TRIPS does not even mandate a sui generis mode of protection for GI.
- Therefore a proof of origin is a mandatory criterion for registering GIs in India.
- This provision is borrowed from the EU's regulations on GI protection.
- **Article 23 of TRIPS:**
  - Article 23 of TRIPS gives a preference to wines and spirits over other goods.



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- Scholars in India have observed that the additional protection of wines and spirits is a huge setback for GI trade related to the developing countries whose GIs are largely related to agricultural and handicraft products.
- The protection given to wines and spirits is absolute and unqualified.
- Unlike right holders of other goods, the proprietor of GI relating to wines and spirits does not have to prove the use of the geographic origin.

### Legislative measures on GI by India

- India implemented a sui generis legislation on GI in 1999.
- It is the prime reason for India's obligation to have a law on GI as a member of the World Trade Organisation-Trade-Related Aspects of Intellectual Property Rights (WTO-TRIPS).

### Loopholes in the Indian Act

- Cause for concern is not proof of origin as a criteria to register GI but the focus on historic proof in the form of documentary evidence to bring out the historic development of GIs as laid down under GI Rules, 2002 to establish proof of origin.
- The documentary evidence has to be in the form of gazetteers, published documents, news articles, advertisement materials, etc.
- The point here is about the rationale behind including such a provision in our law as there was no mandate under TRIPs to do so.
- Documentary evidence as proof of origin may be a foolproof mechanism to ensure the link between the product and territory.
- But in a country such as India where there are regions like the Northeast where oral history has had far wider convention over written history, this provision proves to be a hurdle.

### Various examples

- **The case of Assam:**
  - Assam has been exploring its natural, agricultural and traditional products as potential GI material.



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- Example is a traditional rice wine called 'Judima'.
- It is made by the Dimasa tribe of Dima Hasao, one of the autonomous hill districts of Assam.
- The State government has been tracking academic discourse on the subject with the intent of exploring possibilities in registering it.
- But a hurdle has been the difficulty in gathering documentary evidence as proof of origin.
- **Other problems:**
  - It is the same case with many other products from the Northeast.
  - For example, in the case of 'Judima', the word 'Ju' stands for drink and 'Dima' for Dimasas, but the absence of any documentary proof makes the case a difficult one to prove.
  - For most products, especially those of tribal communities such provisions are a recurrent problem.
- **The case of turmeric:**
  - A few years ago India faced difficulties in a patent case involving turmeric.
  - Two scientists of the University of Mississippi Medical Centre, were granted the U.S. patent for the use of turmeric in wound healing.
  - India's Council of Scientific and Industrial Research opposed this and was asked by the U.S. Patent office to submit documentary evidence of usage of turmeric for healing purposes in India in order to revoke the patent.
  - The existing documentary evidences were found to be insufficient.
  - CSIR then launch a project of translating ancient Sanskrit texts which were later produced as evidence, and accepted.

### Conclusion

- The existing law for Geographical Indications leans too heavily on documentary proof.
- Many cases might exist where a written history is rare.
- Do the products of the region then not stand a chance under the GI law is a question in debate.
- The GI authorities should amend the existing provisions.