Banking on Governance - Freedom From and Freedom To[1]

Sir PT

I feel honoured to join you here today to remember a great son of our soil, Sir Purshotamdas Thakurdas, who during his lifetime received several accolades for his values, intellect and leadership. Notably, he received these honours not only from his countrymen, but also from the British, despite being a severe critic of several policies and institutions of the time.

Sir PT, as he is fondly remembered, was a visionary businessman who always put the interests of the State above business and advocated close partnership between business and the State for nation building. He was a champion of free enterprise, and at the same time recognized the need for control and regulation and favoured a sizable public sector. He even served as a member of the National Planning Committee (with Pandit Nehru as Chairman) and co-created a fifteen-year investment plan, popularly known as Bombay Plan. He co-founded Federation of Indian Chambers of Commerce and Industry; blended commercial banking (Imperial Bank of India) with central banking (Reserve Bank of India); and did much more. As a Member of the Royal Commission on Indian Currency and Finance (1926), otherwise known as the Hilton Young Commission that envisioned the Reserve Bank of India, Sir PT strongly opposed demonetisation of sovereign and half-sovereign which were the only gold coins then. That was, of course, demonetisation of a completely different kind! Not surprisingly, this memorial lecture series has attracted a formidable list of eminent speakers.

Business has never been easy, not in the least in the colonial time. During Sir PT's time, business in general encountered several restrictions from the State and other external sources. To address those restrictions, Sir PT espoused a significant role of the State in freeing up firms and building their capacity to utilise the freedom. His vision quite resembled the contemporary policy quest for improving ease of doing business. I thank Indian the Institute of Banking and Finance for providing me with this opportunity to dwell on a key ongoing reform that confers the ultimate freedom on firms while improving ease of doing business.

Freedom From and Freedom To

Economic freedom for a firm is at least as important as civil freedom for an individual and is the foundation of a market economy. There are broadly two types of economic freedom, namely, 'freedom from' and 'freedom to'. The former, usually referred to as external freedom or negative freedom, is granted from outside. It is freedom from external sources that prescribe and prohibit what a business can do and what it can not. Greater external freedom means less restrictions from external sources, particularly from the State. Most economies, including India, as part of economic reforms, have been enhancing external freedom. On the other hand, 'freedom to', otherwise known as internal freedom or positive freedom, is generated within. It is freedom from sources internal to a firm. Many times, the firm self-imposes restrictions on its own freedom. As a result, it does not always perceive in its entirety the freedom that it enjoys or even when it does, restricts its choice set to what it feels comfortable with. This happens mainly because the firm does not have the capacity and will to realize the internal freedom. Therefore, at any point of time, while the external freedom is the same for all firms, the internal freedom can vary significantly from firm to firm.

Either of the freedom is not adequate in isolation for a firm; they complement each other in a virtuous circle. While expanding frontiers of external freedom, the State usually builds

[1] Edited extracts of the 34th Sir Purshotamdas Thakurdas Memorial Lecture delivered by Dr. M. S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India at SBI Auditorium on 18th December, 2017, under the auspices of the Indian Institute of Banking and Finance. Assistance by Mr. Vikash Singh, Consultant, IBBI is gratefully acknowledged.

institutions to incentivise firms to use it and avoid its misuse. A firm, which is long accustomed to living without freedom and consequently not having adequate governance, initially finds external freedom uncomfortable. With a bit of handholding, it builds on its governance to generate internal freedom to use the available external freedom and flourishes in a market economy. It then deserves and demands more such freedom, which the State grants and the circle continues. It, however, requires considerable dexterity on the part of the State and the firm to expand the frontiers of external and internal freedom, respectively and to build institutions and governance to use freedom and avoid its misuse.

Freedom and Growth

The mainstream economic thought believes that at any point of time, human wants are unlimited while the resources to satisfy them are limited. The central economic problem, therefore, is inadequacy of resources vis-à-vis unlimited, ever-increasing wants. The mainstream legal thought believes that as a person moves from natural state to an economic state, it loses some degree of freedom. The central legal problem, therefore, is inadequacy of freedom to pursue economic interests meaningfully. Thus, we have twin inadequacies of resources and freedom. Fortunately, there are twin adequacies too, namely, resources have alternate uses and firms pursue their self-interests. An economy thrives if it harnesses the twin adequacies subject to twin inadequacies by allowing self-interested firms to have maximum freedom - external and internal, subject to minimum regulations that address market failure and do no more, to move resources, which can be put to alternate uses, from less efficient uses to more efficient ones continuously and seamlessly. This yields optimum freedom for firms to ensure optimum resource utilisation for optimum economic welfare.

Freedom expands choices for a firm. It allows a firm to undertake any business of its choice in the manner and scale it is comfortable with and thereby allows every firm to participate in the economy. It enables a firm to get in and get out of business with ease, undeterred by honest failures. The greatest success comes from having the freedom to fail[2]. Freedom unleashes and realises the full potential of every firm and every resource in the economy. It is well established that economic freedom and economic performance have very high positive correlation. Countries having high level of economic freedom generally out-perform the countries with not-so-high level of economic freedom. The index of economic freedom[3], which measures the degree to which the policies and institutions of an economy are supportive of economic freedom, has substantially improved for India since the 1990s. The outcome has been astounding; the growth rate since the early 1990s onwards has almost doubled as compared to the Hindu rate of growth in the preceding four decades.

Incentives and Nudges

It is relatively easier to provide external freedom. It, however, requires institutions to put such freedom to use. Institutions incentivise firms to build on governance that generate internal freedom matching external freedom. Acemoglu and Robinson[4] demonstrate that a key differentiator among nations is the quality of their institutions. The institutions define the incentive structure in economies, convert freedom to 'will', ensure voluntary participation of firms, incentivise discretionary efforts in the economic sphere and thereby play a significant role in scripting the economic success of countries. They assert that skills and resources are important inputs to economic performance, but the determinant input is 'will'. The State should provide the institutional milieu that (a) provides freedom to pursue a vocation, (b) creates a

[2] Harvard's 366th Commencement Address, 25th May, 2017, Mark Zukerberg.
[3] 2017 Index of Economic Freedom, The Heritage Foundation.
[4] Why Nations Fail: The Origins of Power, Prosperity, and Poverty, 2012, Daron Acemoglu and James Robinson.

level playing field for good ideas to replace obsolete ones, and (c) encourages resources to chase the best productive avenues and thereby nurtures 'will' to bring out the best from her firms.

Degree of coordination necessary to create inclusive policies and institutions on a large scale often eludes all but a central authority, more so in a democracy like ours. The State and its institutions are uniquely bestowed with the mandate and the capacity to prescribe policies that have bearing on economic freedom. They have ended up, mostly by inadvertence and occasionally by design, with rules some of which are prescriptive and hence, restraining, instead of promoting, freedom of choice. Thaler and Sunstein[5] argue for less by the way of government coercion and constraint, and more by the way of freedom to choose. They assert if incentives and nudges replace requirements and bans, Government will be smaller and modest, and it will be easy to do business.

Context and Conduct

Economic freedom is of recent vintage and is evolving; so are the new organs of the State - the regulators and regulatory tribunals - who deal with this. It is yet to acquire the sophistication and sacrosanctity of civil freedom. Further, economic freedom is in a relatively fluid state - it is enhanced or curtailed easily depending on the economic thought and philosophy of the day and sometimes, even regardless. Take the example of right to property which used to be a fundamental right some time ago. It is not so now. Many statutes which restricted, or even denied economic freedom, have been repealed and many others modified in sync with a shift from the command and control regime to a market regime founded on economic freedom. The business, however, needs to remain open to adopt an evolving regime of economic freedom.

Economic freedom is not absolute. It has many shades of grey, probably because it is encapsulated in economic laws, a domain served by both economists and lawyers, who by their multifarious and often conflicting capabilities confuse the rest of us! The determination of an issue relating to economic freedom in each context requires that all possible legal perspectives are considered from all possible economic angles. Let me illustrate this idea with an anecdote. Four persons who had received show cause notices from the competition authority were discussing as to what caused them their predicament. The first person said he charged a price higher than others in the market and has been accused of abuse of market power. The second one said, he charged a price lower than anybody else and has been accused of predatory pricing and hurting competition. The third one said, he charged zero price and has been accused of creating entry barrier. The last one said, he charged the very same price as everybody else and has been accused of cartelisation.

Thus, different conducts invite the same outcome under economic laws while the same conduct may yield different outcomes in different 'contexts'. So, it is not so much the conduct, as the context - who, why, when, what, where and how - of the conduct that matters. In civil laws, murder is bad irrespective of the context: who, why, when, where, etc. are not relevant. However, the same taxi fare can be bad in the morning and good in the evening under economic laws. Unfair pricing is bad if it is by a dominant enterprise and not otherwise. This is the genesis of the 'rule of reason' to guide economic freedom. This has the potential of arriving at either false negatives or false positives sometimes in a context. Further, while no one, not even the State, can encroach upon civil freedom, the State as well the market participants may encroach upon economic freedom in certain contexts for justifiable reasons, and yet not violate the law.

[5] Nudge: Improving Decisions about Health, Wealth, and Happiness, 2008, Richard H. Thaler and Cass R. Sunstein.

The economic laws, therefore, allow greater latitude to businesses, but ascertaining the latitude and using it appropriately requires considerable dexterity on the part of the firm.

Ease of Doing Business

Business provides goods and services as well as livelihood to people and consequently determines their economic wellbeing. Better business regulations generally yield more business, which usually translates to higher economic wellbeing. It is, therefore, the endeavour of every economy to have better business regulations with a view to make it easier for its firms to do business.

The World Bank measures and ranks nearly 200 economies in terms of their respective 'ease of doing business', which is nothing but conduciveness of regulations to promote growth. This is done in terms of reforms in ten sets of indicators, which includes resolving insolvency. A couple of years ago, the Government set an ambitious target of being one among the top 50 economies in terms of doing business and towards this end, initiated deep institutional reforms, including an overhaul of insolvency framework. Consequently, India's rank in the ease of doing business improved from 142 in 2015 to 100 in 2018 [6]. In terms of insolvency resolution, India moved up from 136th to 103rd position.

It is easy for a firm to do business if it has freedom to do it. A firm needs freedom broadly at three stages of a business - to start a business (free entry), to continue the business (free competition) and to discontinue the business (free exit). The first stage ensures allocation of resources to the potentially most efficient use, the second stage ensures efficient use of resources allocated, and the third stage ensures release of resources from inefficient uses for fresh allocation to competing uses - and consequently the highest possible growth. This enables new firms to emerge continuously. They do business when they are efficient and vacate the space when they are no longer efficient.

External Freedom

As a part of comprehensive economic reforms, India made a decisive paradigm shift in the early 1990s from an economy with largely State provision of goods and services to a market-oriented economy, where the State's role was confined to largely regulations for provision of goods and services. The thrust of the reforms since then has been provision of external freedom and building institutions to promote and secure such freedom and regulate such freedom only to address market failures.

India removed restrictions on freedom to start a business in early 1990s with replacement of discretionary license by registration of any firm that met the pre-specified eligibility requirements. If registration is to be denied, it must be determined by a reasoned order and that order is appealable. Further, this freedom is not much use, if a firm does not have resources of its own to start a business and finds it cumbersome to mobilise resources from others. Accordingly, the securities laws allowed a firm, subject to meeting the pre-specified eligibility requirements, to access the securities markets.

Restrictions on freedom of a firm can come not only from the State, but also from other firms. Ideally, a firm should have freedom to do business, but it must not have freedom to restrain the freedom of others. It restrains freedom of others if it has market power - control over either

[6] Doing Business 2018: Reforming to Create Jobs 15th edition by The World Bank.

price and or quantity - and abuses such market power to the detriment of others. For instance, if a firm adopts predatory pricing and has the financial muscle to sustain it, it effectively thwarts the competitors' freedom to do business. With a view to providing freedom at market place from other businesses, reforms in the 2000s proscribed predatory pricing. Further, this freedom does not serve much of a purpose, if the policies and institutions are not neutral to all firms. The competition law accordingly provided the same level playing field to all firms, state owned and private.

A firm that has freedom of entry and freedom to do business may, however, fail to deliver as planned. It is possible that such a firm has a viable business, but it would deliver if its business is reorganised with or without the existing management, product portfolio, technology or business model. If it is unviable, it needs to be closed with the least cost and disruptions. The Insolvency and Bankruptcy Code, 2016 (Code) provides a market mechanism for orderly resolution of viable, but insolvent firms, and closure of unviable, insolvent firms. It also allows closure of solvent firms if the stakeholders so wish.

Thus, the Indian economy witnessed freedom of entry in the 1990s led primarily by reform in securities laws, and freedom to compete in the 2000s led primarily by reform in competition laws. This decade has witnessed the ultimate economic freedom, the freedom to exit, led primarily by reform in insolvency and bankruptcy framework. It needs to be noted that removal of restrictions is always a work-in-progress and there would never be a situation without any restriction on freedom of entry or freedom to compete at market place. This is because freedom needs to be restricted in certain situations to address market failures or even to protect freedom of others.

Internal Freedom

External freedom may not translate into economic wellbeing, if firms do not have freedom to, otherwise known as internal freedom. The scope of internal freedom depends on the ability and willingness to make the right choice. External freedom may allow a firm to commence a business, but it may not commence that business if it does not have the ability and willingness to take the plunge. A firm, therefore, needs to enhance its internal freedom in sync with external freedom to harness full benefits.

Often a business does not want too much of external freedom because it does not have the governance to harness and exercise internal freedom, i.e., it is constrained by its limited maturity and vision of choices available. In a different context, Erich Fromm observes[7]: "freedom from the traditional bonds of medieval society, though giving the individual a new feeling of independence, at the same time made him feel alone and isolated, filled him with doubt and anxiety, and drove him into new submission and into a compulsive and irrational activity". This led him to attempt to escape from freedom that he had gained. Therefore, exercise of internal freedom requires expanded vision and maturity.

If we exclude malfeasance, flawed decisions are mostly due to restricted or limited visibility of available choices. Where a firm is not able to visualise the complete menu of choices available, it takes suboptimal decisions. Further, it may not always be open to disruptive ideas and may even reject them *prima facie*. A choice in isolation is very different from a choice relative to options available on the table. If the trade-off between choices are observable, controllable, and

[7] Escape from Freedom, 1941, Erich Fromm.

measurable; the vision becomes clear. It is for the State to design institutions and policies such that the stakeholders can consider all possible choices and take informed decisions.

Thaler and Sunstein believe that a good system of choice architecture helps people to improve their ability to map and hence to select options that make them better off. Some of the best nudges use markets; good choice architecture includes close attention to incentives. The reforms and the underlying rules and regulations hence should focus on a choice structure to 'nudge' people towards a desirable governance structure of the firm. The State needs to be a choice architect and nudge business towards right choices and thereby help the business to visualise the complete horizon of internal freedom.

Sir PT was ahead of his time in envisioning this very contemporary thinking about economic freedom, ease of doing business and governance to use freedom. These basic ingredients have shaped the Code that expands the scope of external freedom and enables firms - debtors, creditors, and resolution applicants – to use such freedom to their advantage.

The Insolvency and Bankruptcy Code, 2016

Insolvency is an outcome of market process. The Code provides a market process for its resolution. Equity owners have complete control over a firm as long as the firm services its debt obligations. When it fails to service debt, the Code shifts control to the creditors who get a right to decide what to do with the firm. It segregates commercial aspects of insolvency resolution from judicial aspects, while empowering both the stakeholders in the firm and the adjudicating authority to decide matters within their respective domain expeditiously[8]. It provides a time bound and orderly resolution of insolvency, wherever possible, and ease of exit, wherever required, with the least cost and disruption, for maximisation of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

While competition and innovation contribute to the growth of the economy, they do increase the incidence of firm failure. The failure could also arise from faulty conceptualisation of business, inefficient execution of business and change of business environment. In some rare case, they could be due to malafide intentions too. Irrespective of the reason, it dampens entrepreneurship if it is onerous for an entrepreneur to exit a business in an orderly and predictable manner. The Code reduces incidence of failure in two ways. First, the inevitable consequence of default in terms of insolvency proceedings prompts behavioural changes on the part of debtor to try hard to prevent business failure. Second, it reduces failure by setting in motion a process that rehabilitates failing businesses that are viable. If, however, rehabilitation is not possible, the Code facilitates its closure with the least cost and disruptions. By allowing closure of non-viable firms, wherever required, the Code enables an entrepreneur to get in and get out of business with ease, undeterred by failure (honest failure for business reasons). The Code thus addresses business failures by reducing the chances of failure, rescuing failing businesses where possible and releasing resources from businesses, where rehabilitation is not possible and thereby promotes entrepreneurship.

[8] When a corporate defaults the threshold amount, a financial creditor, an operational creditor, or the corporate itself may initiate the resolution process. It makes an application before the adjudicating authority (AA) along with the evidence of default. If default is established, the AA admits the application and appoints an interim insolvency professional. The professional runs the operations of corporate as a going concern up to 30 days during which he collects the claims and based on the same, forms a Committee of Creditors (CoC). The corporate moves away from 'debtor-in-possession' to 'creditor-in-control'. The CoC appoints a resolution professional to run the corporate as a going concern and decides what to do with the corporate. The CoC endeavours to resolve insolvency through a resolution plan. The resolutuion professional invites plans from eligible resolution applicants. If the approves a resolution plan within 180 days with 75% majority, the resolution professional submits the plan to the AA for approval. If the AA does not receive a resolution plan within the scheduled time, the corporate is liquidated.

Failure usually manifests in a default in repayment obligations. The lenders are unwilling to lend to firms when they face the risk of default. When lenders do not get back their funds, availability of funds at their disposal reduces, limiting their ability to lend to genuinely viable projects. Further, the risk of low and delayed recovery pushes up the cost of funds, and consequently, credit becomes available at a higher cost at which many projects become unviable. The resultant high cost of capital creates a vicious cycle where entrepreneurs with feasible projects are priced-out and lenders end up financing the riskier ventures who are willing to borrow at such high cost. Through provision for resolution and liquidation, the Code enables lenders to recover funds from either future earnings, post-resolution or sale of liquidation assets. On the other hand, the inevitable consequence of a resolution process deters the management and promoter of the firm from committing a default and thereby minimizes the incidence of default. These increase supply of credit, reduce cost of funds, and develop debt market.

Default reflects relative under-performance (inefficiency) of a firm as compared to the most competitive firm in the industry. In other words, the resources at the disposal of a firm may not be optimally utilised. The Code enables the optimum utilisation of resources, all the time, either by (a) preventing use of resources below the optimum potential, (b) ensuring efficient resource use within the firm through resolution of insolvency; or (c) releasing unutilised or under-utilised resources for efficient uses through closure of the firm. By liberating the resources stuck up in inefficient and defunct firms for continuous recycling, the Code has granted the ultimate freedom and thereby changed the script from 'Hopeless End' to 'Endless Hope'.

Quest for NPA Solution

I limit my discussion hereafter to banks. It is often asked: Does the Code address the malaise called NPA? Ahluwalia[9] visualises a *Sudarshan Chakra* with four 'R's, namely, Recognition, Resolution, Recapitalization, and Reforms to tackle the NPA malaise. Clearly, the Code is an essential component of the strategy to deal with NPAs. Ahluwalia finds the Code having some *Sudarshan Chakra* like qualities, as it offers liquidation as the only alternative to time-bound resolution. It is important to note that first three R's are remedial. If pursued to logical end, they may clean up the books of the banks of NPAs. Further, the Code has the potential to prevent burgeoning of NPAs as a bank is entitled to invoke the Code at the earliest instance of default. However, these three R's do not address emergence of fresh NPA. That requires a *Sudarshan Chakra* on reforms - reform of governance of banks that expands their positive freedom and that accepts a reasonable level of NPAs as cost of doing business where lenders and borrowers, during the natural course of profitable pursuits, will go wrong despite their best efforts.

The Code expands external freedom of banks by adding resolution to the choice set. To make the right choice, a bank needs internal freedom. It may choose between resolution or recovery, but it cannot choose resolution to recover NPAs. It has quite a few choices under the recovery menu; resolution is not an addition to the said menu. Thus, a bank needs to be clear as to what it wishes to achieve from resolution. If it wishes to recover the NPAs, resolution is not a choice. The NCLAT has made[10] it clear that resolution process is not a recovery proceeding to recover the dues of the creditors. In another matter, the NCLT has observed[11] that after the resolution process commences, the nature of proceeding changes to representative suit and the *lis* does not remain only between a creditor and the debtor. In fact, the Code prohibits any action to

[9] A 'Sudarshan Chakra' solution for PSU banks, September 29, 2017, livemint, Montek Singh Ahluwalia.
[10] Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. [Company Appeal (AT) (Insol.) No. 89 of 2017].
[11] Parker Hannifin India Private Limited Vs. Prowess International Private Limited [I.A. No. 226/KB/2017].

foreclose, recover or enforce any security interest during resolution period, as recovery yields inequitable distribution of available assets to one or a few aggressive creditors to the detriment of the debtor and other creditors. One creditor after another takes away whatever is available leaving nothing for resolution.

The Code endeavours resolution of insolvency an early stage to prevent it from ballooning to un-resolvable proportions. A stakeholder is entitled to trigger resolution process as soon as there is a default of the threshold amount. It is, however, not obliged to do so at the first available opportunity if it is explicable. This is based on the premise that in early days of default, enterprise value is likely to be higher than the liquidation value and hence the stakeholders would be motivated to resolve insolvency of the debtor rather than liquidate it. It is thus not a mechanical exercise for a bank to trigger resolution as soon as there is a default of at least Rs.1 lakh. It needs to ascertain the reasons for default and the likelihood of successful resolution under the circumstances and evaluate various options available to it and then choose the best one, from its perspective. If it is interested in recovery, it must not trigger resolution under the Code. In fact, it may find a resolution outside the Code more rewarding. It may find that there is no resolution under the current circumstances. Besides, a trigger of resolution under the Code involves costs to the stakeholders as it derails operations of the debtor to some extent during resolution and brings uncertainty about its future, in addition to the explicit costs of resolution and the possibility of liquidation. A bank needs to take a call whether and when to trigger resolution in case of a default, considering all these aspects. It needs to use the choice, but must not misuse it or wrongly use it, however, must not refrain from using it when required. This requires a very high degree of internal freedom on the part of a bank.

A bank is not the only stakeholder entitled to trigger resolution. An operational creditor, another financial creditor or even the debtor itself may trigger resolution. In that case, the bank has no option but to participate in the resolution. In one case, a bank filed an application under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the DRT for recovery of Rs.73 crore against a debtor and its guarantors. While the matter was pending before the DRT, the debtor filed an application before NCLT to trigger resolution under the Code. The NCLT admitted the application and declared moratorium till the completion of insolvency resolution process. Thereafter, the DRT stayed the proceeding against the debtor in view of the moratorium. The issue came up whether the proceedings against the guarantors should also be stayed. The High Court[12] observed that until the liabilities of the corporate debtor and guarantor are in a fluid stage and not crystallized, the guarantors cannot be held liable and it cannot allow the creditor to pursue two remedies on the same cause of action. Therefore, it stayed the proceedings before the DRT till the finalization of insolvency resolution process. It is important that a bank takes a decision keeping in view any anticipated moves by other stakeholders so that it does not limit its options.

The Code mandates closure of resolution process in a time bound manner. The enterprise value of the firm reduces exponentially with time, as prolonged uncertainty about its ownership and control and general apprehension surrounding insolvency leads to a flight of customers, vendors, workers, etc. A bank needs to be mindful that if the process does not yield resolution within the timeline, it would end up in liquidation which may not serve its interest. Further, the Code puts the entire process at the disposal of the financial creditors, irrespective of who triggers it. It permits limitless possibilities of market-based resolution plans with or without the existing promoter, management, products, technology or business model. A bank needs to have

[12] Sanjeev Shriya Vs. State Bank of India and Ors. (Civil Writ Petition No. 30285 of 2017).

the ability to engender competitive resolution plans and to evaluate them to choose the best one that maximizes the value of assets of the debtor. More importantly, it needs to handover the corporate to a person who has a credible record and is likely to deliver so that the resolution is sustainable. Traditionally, a bank has capability in matters of credit and certain fee-based services. It now needs the capabilities of a businessman to decipher an appropriate resolution plan or identify a resolution plan that will work.

The Code thus presents a choice architecture to stakeholders, where they (a) can see all the policy agnostic options, (b) accurately ascertain the trade-off between different choices, (c) have the freedom to choose the best option, and (d) are nudged towards a solution which balances the interest of all, not just the strongest one. It takes away the excuse of not reacting in time before the problem takes a gigantic proportion. Although the Code adds one more powerful choice for banks, it is not a simple choice. A bank needs capability to evaluate various choices in the menu and trigger resolution at the right time keeping in view choices likely to be exercised by other stakeholders. It is a choice with huge attendant consequences. It may mean acceptance of large losses in some cases. It may even mean liquidation in some other cases. But not using the choice is not an option. The decision by the bank to make the choice needs to be concluded appropriately and expeditiously. It needs to be used where it is necessary, though its use on a large scale may be inevitable in today's context of legacy issues, and its use must be avoided where it is not necessary. Keeping these in view, it is imperative for a bank to so govern itself that it is not pushed to a point where it has to use resolution and it must have the capability to use resolution appropriately to its advantage.

I have illustrated the internal freedom required to make an effective choice by a creditor keeping in view the external freedom granted by the Code. Other stakeholders, namely, corporate debtor and resolution applicants also need similar internal freedom to use the Code to their advantage. Most often a choice made by a stakeholder limits the choices available to other stakeholders. Coupled with the fact that economic freedom has many shades of grey, a firm needs a much higher order of governance and consequently internal freedom to survive and flourish in a market economy. If, however, it runs away from freedom, the State may have excuses to curb freedom from and hence, freedom to. The State needs to incentivise and nudge the firms to build on their governance.

I thank the Indian Institute of Banking and Finance and its Director, Mr. Jibendu Misra for this opportunity to speak to you. Thank you very much for your patient hearing.