CURRENT AFFAIRS

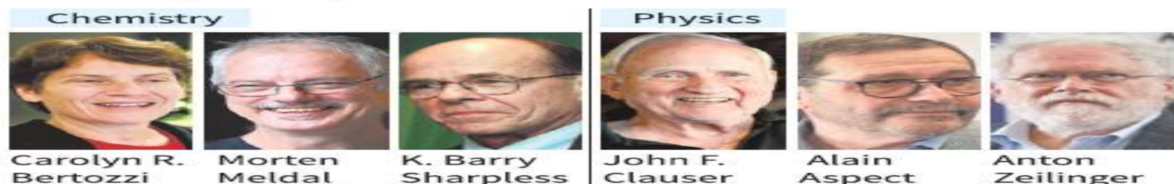
6 OCTOBER 2022

TOPIC: SCIENCE AND TECHNOLOGY

Nobel for work on 'click chemistry' and quantum mechanics

And the winners are...

A look at the pair of scientist trios who won the Nobel prizes in Chemistry and Physics



Reuters
STOCKHOLM

Scientists Carolyn R. Bertozzi, Morten Meldal and K. Barry Sharpless won the 2022 Nobel Prize in Chemistry on Wednesday for discovering reactions that let molecules snap together to create desired compounds and that offer insight into cell biology.

It came a day after Alain Aspect, John F. Clauser and Anton Zeilinger won the prize in physics for their advances in quantum mechanics on the behaviour of subatomic particles, opening the door to work on super computers and encrypted communication.

Americans Ms. Bertozzi and Mr. Sharpless, together with Denmark's Mr. Meldal, were honoured "for the development of click chemistry and bioorthogonal chemistry".

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TOPIC:STATE EXECUTIVE

Gubernatorial procrastination is unreasonable

A Bill passed by the State Assembly becomes law only after it is assented to by the Governor. The Governor being a part of the State legislature, the process of law making is complete only when he signs it, signifying his assent. In all democratic countries, similar provision exists in their constitutions. It may look a bit strange that the law-making body does not have the final say in the process of law making and the Bill it passes gets transformed into law only when the Governor assents to it. Thus, the Governor's assent becomes the most crucial act in the whole law-making process.

P.D.T. Achary

is former Secretary General, Lok Sabha

The examples of Kerala and Tamil Nadu

But the Governor's assent has, of late, become a controversial issue in at least two States — Kerala and Tamil Nadu. In Tamil Nadu, the Governor forwarded the Bill for exemption from the National Eligibility cum Entrance Test (NEET) to the President after considerable delay. In Kerala the situation has become a bit curious with the Governor publicly announcing that he would not give assent to the Lokayukta Amendment Bill and the Kerala University Amendment Bill. Such actions by Governors throw the legislative programmes of governments out of gear because of the uncertainty surrounding the assent. Therefore, the question of whether a Governor is permitted by the Constitution to cause uncertainty in the matter of giving assent to the Bills passed by State legislatures assumes great importance.

Article 200 of the Constitution provides certain options for the Governor to exercise when a Bill reaches him from the Assembly. He may give assent or he can send it back to the Assembly requesting it to reconsider some provisions of the Bill, or the Bill itself. In this case, if the Assembly passes the Bill without making any change and sends it back to the Governor, he will have to give assent to it. This provision contained in Article 200 (*proviso*) unambiguously affirms the primacy of the legislature in the legislative exercise. The third option is to reserve the Bill for the consideration of the President. The provision concerned makes it clear that a Bill can be reserved for the consideration of the President only if the Governor forms an opinion that the Bill would endanger the position of the High Court by whittling away its powers. The Constitution does not mention any other type of Bill which is required to be reserved for the consideration of the President. Nevertheless, the courts have conceded a certain discretion to the Governors in the matter of sending Bills to the President. The fourth option, of course, is to withhold the assent. But it is not normally done by any Governor because it would be an extremely unpopular action. The legislature reflects the will of the people and is the constitutionally designated body to make laws. If the Governor who does not reflect in any way the aspirations of the people of the State refuses assent, and thereby defeats the legislative programme of the elected government, it would be against the spirit of the Constitution. The fact that the Constitution does not mention the grounds on which a Governor may withhold assent to a Bill shows that this power should be exercised by the Governor extremely sparingly and after very careful consideration of the consequences of such action.

When Article 200 of the Constitution is clear about providing certain options for the Governor to exercise when a Bill reaches him from the Assembly, he is required to effect one of the options mentioned

CH. VIJAYA BHASKAR

Practices overseas

In this context it would be useful to examine the practice in the United Kingdom. There too royal assent is necessary for a Bill to be passed by Parliament to become law and the crown has the power to withhold assent. But it is a dead letter. By practice and usage there is no power of veto exercised by the crown in England now. Moreover, refusal of royal assent on the ground that the monarchy strongly disapproves of the Bill or that the Bill is very controversial is treated as unconstitutional. In the United States, the President is empowered by the Constitution to refuse assent and return a Bill to the House but if the Houses again pass it with two thirds of each House the Bill becomes law.

The lesson to be drawn from these practices is that refusal of assent is a practice which is not followed in other democratic countries. And in some contexts, it is unconstitutional or the Constitution itself provides a remedy so that the Bill passed by the legislature could become law even after the refusal of assent.

The Indian Constitution, however, does not provide any such remedy. The courts too have more or less accepted the position that if the Governor withholds assent, the Bill will go. Thus, the whole legislative exercise will become fruitless. It does not square with the best practices in old and mature democracies.

Issue of challenge

In this context, a legitimate question that arises is whether the government of a State can challenge the refusal of assent by the Governor in a court of law. Article 361 of the Constitution prohibits the court from initiating proceedings against a Governor or the President for any act done in exercise of their powers. They enjoy complete immunity from court proceedings. It is in fact a unique situation where a government is placed in a situation of having to challenge a Governor's action of withholding assent to a Bill. It may be noted that the Governor while declaring that he withholds assent will have to disclose the reason for such refusal. Being a high constitutional authority, the Governor cannot act in an arbitrary manner and, therefore, will have to give reasons for refusing to give assent. If the grounds for refusal disclose *mala fide or extraneous considerations or ultra vires*, the Governor's action of refusal could be struck down as unconstitutional. This point has been settled by a Constitution bench of the Supreme Court in *Rameshwar Prasad and Ors. vs Union Of India and Anr*. The Court held: "the immunity granted by Article 361(1) does not, however, take away the power of the Court to examine the validity of the action including on the ground of malafides".

Of course, the court will not be able to direct the Governor to act in a particular way. Invalidation of the refusal to give assent to a Bill on the ground of *mala fide*, etc. leaves such other options to him to exercise — as mentioned in Article 200.

It is claimed that since the Constitution does not fix any timeline for the Governor to decide the question of assent, he can wait for any length of time without doing anything. This is illogical and militates against the constitutional scheme in respect of law making by the legislatures. Not fixing any time line does not and cannot mean that the Governor can indefinitely sit on the Bill that has been passed by an Assembly. Article 200 does not contain such an option. The Governor is required to exercise one of the options mentioned in that Article. We must understand the purpose of giving options is for the authorities to exercise one of them and not to do something which is not an option at all. All constitutional authorities are required to act in a reasonable manner. Unreasonable acts are unsustainable in law.

What is the Insolvency and Bankruptcy Code?

Why did Union Finance Minister Nirmala Sitharaman say that the IBC is losing its sheen? Is the IBC able to keep companies afloat by resolutions through re-structuring and mergers?

Diksha Munjal

The story so far:

Speaking at the sixth anniversary of the Insolvency and Bankruptcy Board of India (IBBI) on October 1, Union Finance Minister Nirmala Sitharaman said that the country could not afford to lose the "sheen" of its insolvency law, the Insolvency and Bankruptcy Code (IBC). Addressing the issue of haircuts – or the debt that banks forgo – she said it was unacceptable that banks should take a hefty haircut on loans that go through the resolution process.

What is the IBC?

In a growing economy, a healthy credit flow and generation of new capital are essential, and when a company or business turns insolvent or "sick", it begins to default on its loans. In order for credit to not get stuck in the system or turn into bad loans, it is important that banks or creditors are able to recover as much as possible from the defaulter, as quickly as they can.

In 2016, at a time when India's Non-Performing Assets and debt defaults were piling up, and older loan recovery mechanisms were performing badly, the IBC was introduced to overhaul the corporate distress resolution regime in India and consolidate previously available laws to create a time-bound mechanism with a creditor-in-control model as opposed to the debtor-in-possession system. When insolvency is triggered under the IBC, there can be just two outcomes: resolution or liquidation.

What are the challenges for the IBC?

According to its regulator IBBI, the first objective of the IBC is resolution – finding a way to save a business through restructuring, change in ownership, mergers etc. The second objective is to maximise the value of assets of the corporate debtor while the third is to promote entrepreneurship, availability of credit, and balancing of interests. Keeping this order in mind, when one looks at the IBBI data for the 3,400 cases admitted under the IBC in the last six years, more than 50% of the cases ended in liquidation, and only 14% could find a proper resolution. Furthermore, the IBC was touted as a time-bound mechanism. Timeliness is key here so that the viability of the business or the value of its assets does not deteriorate further. The IBC was thus initially given a 180-day deadline to complete the resolution process, with a permitted 90-day extension. It was later amended to make the total timeline for completion 330 days – which is almost a year. However, in FY22, it took 772 days to resolve cases involving companies that owed more than ₹1,000 crore. The average number of days it took to resolve such cases increased rapidly over the past five years, experts said. When we come to haircuts – the debt foregone by the lender as a share of the outstanding claim – the Parliamentary Standing Committee on Finance pointed out in 2021, that in the five years of the IBC, creditors on an average had to bear an 80% haircut in more than 70% of the cases. As per *The Hindu* Data Team, in close to 33 of 85 companies so far that owed more than ₹1,000 crore, lenders had to take above 90% haircuts. In case of the resolution of the Videocon Group for instance, creditors bore a haircut of 95.3%.

What are experts saying?

In order to address the delays, the Parliamentary Standing Committee suggested that the time taken to admit the insolvency application and transfer control of the company to a resolution process, should not be more than 30 days after filing. The IBBI has also called for a new yardstick to measure haircuts. It suggested that haircuts not be looked at as the difference between the creditor's claims and the actual amount realised but as the difference between what the company brings along when it enters IBC and the value realised.

THE GIST

On October 1, Union Finance Minister Nirmala Sitharaman said that the country could not afford to lose the "sheen" of its insolvency law, the Insolvency and Bankruptcy Code (IBC).

The IBC was introduced in 2016 to consolidate previously available laws to create a time-bound mechanism with a creditor-in-control model as opposed to the debtor-in-possession system. When insolvency is triggered under the IBC, there can be just two outcomes: resolution or liquidation, with the former being the preferred solution.

However, when one looks at official data for the 3,400 cases admitted under the IBC in the last six years, more than 50% of the cases ended in liquidation, and only 14% could find a proper resolution.

White House calls OPEC Plus supply cut move 'shortsighted'

OPEC PLUS

- ✓The non-OPEC countries which export crude oil are termed as OPEC plus countries.
- ✓OPEC plus countries include Azerbaijan, Bahrain, Brunei, Kazakhstan, Malaysia, Mexico, Oman, Russia, South Sudan and Sudan.

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Organization of the Petroleum Exporting Countries (OPEC)

- ✓The Organization of the Petroleum Exporting Countries (OPEC) is a permanent, intergovernmental organization, created at the Baghdad Conference in 1960, by Iran, Iraq, Kuwait, Saudi Arabia, and Venezuela.
- ✓It aims to manage the supply of oil in an effort to set the price of oil in the world market, in order to avoid fluctuations that might affect the economies of both producing and purchasing countries.
- ✓It is headquartered in Vienna, Austria.
- ✓OPEC membership is open to any country that is a substantial exporter of oil and which shares the ideals of the organization.

TOPIC: ARCHEALOGICAL DISCOVERIES

'Caves of Bandhavgarh not Buddhist'

FINDINGS

Buddhist Caves:

✓26 Buddhist Caves were discovered dating back to the 2nd and 5th centuries, pertaining to the Mahayana sect of Buddhism.

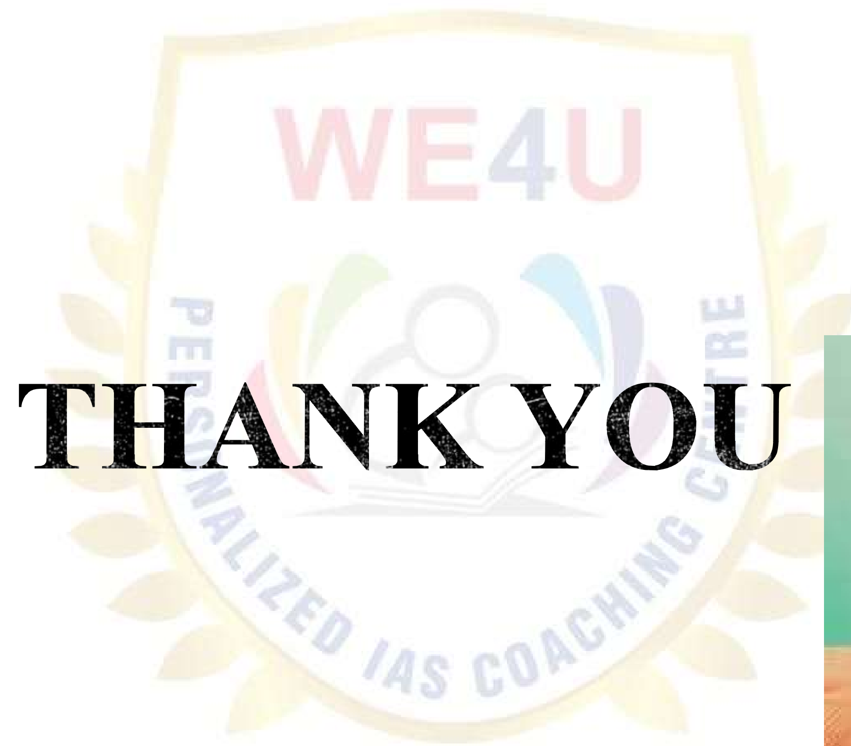
Inscriptions in Brahmi text:

✓24 inscriptions in Brahmi text were, all dating back to the 2nd-5th centuries.

✓The inscriptions mention sites such as Mathura and Kaushambi, and Pavata, Vejabharada and Sapatanaairikaa.

Remains of Temples:

- ✓The remains of 26 temples dating to the Kalachuri period between 9th-11th centuries and the possibly world's largest Varaha sculpture also dating to the same period were found.
- ✓The Kalachuri dynasty, which spread over parts of Gujarat, Maharashtra and Madhya Pradesh, is also associated with the earliest Ellora and Elephanta cave monuments.
- ✓The Varaha sculpture is among the many monolithic sculptures of the 10 incarnations of Lord Vishnu.
- ✓Two Saiva mutts have also been found.



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