

# Clearing up the legislative barriers to privatisation

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The core group of secretaries on disinvestment has recently approved the disinvestment of five public sector undertakings (PSUs). This includes the entire shareholding of the government in four PSUs: Bharat Petroleum Corporation (BPCL), Shipping Corporation of India (SCI), North Eastern Electric Power Corporation (NEEPCO) and THDC (operates and maintains the Tehri Hydro Power Complex), and 30 per cent of the shareholding in Container Corporation of India Limited (Concor). The government currently holds 54.8 per cent of Concor, so the sale will reduce its stake below 25 per cent.

Over the past few years, the government has removed legislative barriers towards privatisation of several other PSUs. This raises the question of whether the government plans to privatise them.

## Supreme Court on privatisation of PSUs

In 2003, a similar proposal had been raised by the government for the sale of its shareholding in HPCL and BPCL. This proposal was challenged in the Supreme Court on the grounds that it would violate the provisions of the laws that transferred ownership of certain assets to the government. For example, BPCL was formed by nationalising Burmah Shell in India through an Act of Parliament, and merging their refinery and marketing companies. The court ruled that the central government cannot proceed with privatisation of HPCL and BPCL (i.e., reduce its direct or indirect ownership below 51 per cent) without amending the concerned laws. So the government continues to hold majority stake directly in BPCL, and indirectly in HPCL (through ONGC, another PSU).

The five companies approved for privatisation include BPCL and SCI (into which two nationalised companies, the Jayanti Shipping Company, and the Mogul Line Limited were merged). The relevant nationalisation Acts have been repealed over the last five years.

## The Repealing and Amending Acts

Between 2014 and 2019, Parliament passed six Repealing and Amending Acts, which repealed around 722 laws. These included laws that had transferred the ownership of companies to the central government, which later formed BPCL, HPCL, and OIL. These also repealed the laws that had transferred ownership of the companies to the central government, which were

## SOME PSUs IMPACTED BY REPEALING ACTS

(list not exhaustive)

- Shipping Corporation Of India (SCI)
- Bharat Petroleum Corporation (BPCL)
- Hindustan Petroleum Corporation (HPCL)
- Steel Authority of India (SAIL)
- Power Grid Corporation of India

later merged with SCI. This implies that now the government can go ahead with privatisation of these government companies as the conditions imposed by the Supreme Court's order have been fulfilled. A number of other nationalisation laws were also repealed. Note that the Law Commission of India had suggested the repeal of several of these laws (including the Esso Act, the Burmah Shell Act, and the Burn Company Act) on the grounds that these laws do not serve any purpose with respect to the nationalised entity. However, it had suggested that a study of all the nationalisation Acts should be done before repealing these Acts, and if necessary a savings clause should be provided in the repealing Act.

## Parliamentary scrutiny

Many of these repeals were made through the Repealing and Amending Act, 2016. These include the Acts relating to BPCL, HPCL, OIL, Coal India, SCI, National Textiles Corporation, Hindustan Copper, and Burn Standard Company. The Bill was not referred to a Standing Committee of Parliament, and was passed after a cursory debate (50 minutes in the Lok Sabha and 20 minutes in the Rajya Sabha). Similarly, the two Acts passed in 2017 that enable privatisation of SAIL, PowerGrid, and State Trading Corporation were not examined by the Standing Committee.

What comes next?

The repeal of these Acts has cleared the legislative hurdle for privatisation of these companies. That is, the government does not need the approval of Parliament to sell its shareholding. Therefore, it is now up to the government to decide whether it wishes to privatise these entities.

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