PolicyWatch

Covering developments on policy responses, policy implementation and policy distortions on a quarterly basis. Comments are welcome.

Volume 14, No. 2 April-June 2013

Going Down the Wrong Road

INSIDE THIS ISSUE

Debate before Implementing MNP 2

Green Bypass for Road Projects 3

RBI to Regulate Home Loans 6

51% FDI in Multi-brand Retail 10

PPP under RTI Ambit...........14

New Realty Laws & Regulator 16

Health Cover becomes Costlier 18

HIGHLIGHTS

Who Benefits from Fuel Subsidies? – *David Coady and Thomas Richardson* 9

Tightening Constraints to Inclusive Development – *Shankar Acharya* 11

Reforms as a Scapegoat – *Ravi Shanker Kapoor* ...15

India's Great Gatsby Curve – *Vikram S Mehta* 22

"The reformer has enemies in all those who profit by the old order and only lukewarm defenders in all those who would profit by the new." **Machiavelli** in *The Prince*

According to some, the idea of a road regulator does not make sense. On the other hand, we do need an exclusive body to deal with problems in all types of Public Private Partnership (PPP) contracts, which include roads.

The Hindu Business Line

The Finance Minister proposed a regulator for the road sector, mainly for three reasons: financial stress faced by the developers; contract management and renegotiation to sort out the problems of existing contracts; and enhanced construction risk. Indeed, all three issues impact the growth of highways in the country and need to be tackled, and the Ministry of Road Transport & Highways is pushing the idea, with the support of the private sector. But they are unable to answer the fundamental question: Do we need an exclusive regulatory authority for dealing with them or find solutions through other means?

First, no country in the world has a road regulator, so why do we need one? An economic regulator is required where there are market failures. In the case of the highways, it is a government and not a market failure.

The only issue of regulation in the highways sector is that of tolls, which does not call for independent regulation. At the moment toll rates are determined by the government which implements it in an opaque manner, without public participation.

Second, economic regulation all over the world is done in two ways: one by law such as in the telecom and electricity sectors, and the other by contract. In the case of the highways, all projects are awarded as a bilateral contract with clearly defined rules on the basis of an excellent model concession agreement (MCA) drawn up by the Planning Commission.

Disputes and delays, including abandonment, are the core issues affecting the highways development programme. It is estimated that ₹10,000 crore is the disputed amount in all pending claims. The MCA and the contracts provide for an easy dispute settlement process, with the help of Dispute Review Boards and Arbitration Tribunals.

One wonders whether this two-tier process will be able to suggest fresh terms, because several developers would like to renegotiate their contracts. If there are systemic issues in all highways contracts, the government can deal with them in a wholesale manner, and also amend the MCA.

India's Economic Affairs Secretary Arvind Mayaram, who is *au fait* with the current muddy Indian scenario, says that private firms must not be bailed out, otherwise the Government will be accused of crony capitalism.

Indeed, there is a case for a regulatory and dispute settlement board for PPPs, which can work across all PPP contracts, including roads. The Planning Commission has suggested such a body. But, it should be in the hands of young professionals or judges and civil servants with some understanding of law and economics, and not retired judges and *babus*.

Published by **Consumer Unity & Trust Society (CUTS)**, D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India
Phone: 91.141.228 2821, Fax: 91.141.228 2485 Email: c-cier@cuts.org, Website: www.cuts-ccier.org
Printed by: Jaipur Printers P. Ltd., M.I. Road, Jaipur 302 001, India.

• COMMUNICATION •

Review Telecom Security Policy

The Telecom Commission will shortly clear telecom security policy, which calls for developing indigenous capacity to locally churn out electronics and software inducted into telephone networks.

India's telecom security will give preferential market access to local manufacturers for government contracts. Western vendors and governments of several countries have deplored India's tough stance.

Even the Prime Minister's Office had recently expressed apprehensions about investment implications, claiming that mandating domestic sourcing of all telecom and electronic products classified as security sensitive, could lead "to market distortions".

(ET, 21.06.13)

Unified Licence Policy Opens

The draft Unified Licence Policy proposed to allow telecom and broadband players to appoint cable operators as franchisees to use the last mile linkages in rural areas. This will help take internet penetration to rural regions and will be a 'win-win' situation for both telecom players and cable operators.

The terms of franchise agreement between Licensee and his franchisee shall be settled mutually by negotiation between the two parties involved and the Cable Operators will have to be registered under the Cable Television Networks (Regulations) Act 1995 and its amendments.

According to the latest TAM figures, there are an estimated 140 million cable and satellite households. Out of this, nearly 74 million households are in rural areas. Nearly an estimated 82 million households have television sets in the rural region.

(BL, 08.05.13)

Telcos to Share Spectrum

As per the changes announced by the National Telecom Policy, 2012 telecom companies will be allowed to share spectrum. Telcos will have to get specific permission to share their spectrum, which will be valid for five years.

The telcos sharing spectrum will have to pay for the combined quantum of spectrum and only be allowed to share air waves once they have paid the contentious one-time fee levied on companies holding more than the so-called start-up spectrum that came with the licences they were issued.

It was not immediately clear whether DoT would frame guidelines for such agreements and whether telcos would be allowed to share spectrum if they have a licence to operate in a circle, but have not been allocated frequencies yet.

(Mint, 16.04.13)

Debate before Implementing MNP

Considering governments' intention to introduce national-wide mobile number portability (MNP), leading mobile phone companies suggested the regulator to conduct a detailed cost-benefit analysis at the national level to gauge the demand for this service.

The telcos indicated that inter-service area MNP volumes would be a mere fraction of the subscriber base. Hence, putting the service in place may not be commercially viable as high implementation costs will outweigh demand and add to the cost pressure even as hyper-competition and mounting debt negatively impacts profits in the sector.

Cellular Operators Association of India said that cost benefit analysis will determine the future course of action and regulator must share a perspective on the impact of full MNP on existing services and tariffs, thus it should therefore be included in consultations proposed by TRAI.

(ET, 16.04.13)

BSNL: It's Cartel on 3G

Opposing the agreements among the Bharti, Airtel, Vodafone and Idea Cellular, Bharat Sanchar Nigam Ltd has charged them for cartelisation to offer 3G services illegally in areas where they did not have spectrum, causing huge loss to the exchequer.

BSNL, in a petition filed with the Supreme Court, alleged that due to such arrangements, telecom service providers are being illegally benefited and adversely affecting the business interest of BSNL. Airtel challenged the order by the Department of Telecom (DoT) to shut down 3G services where the operator did not have spectrum.

(BL, 25.04.13)

Licensing Fee for TV Owners

The working group on 'Business Development of Prasar Bharti' constituted under the chairmanship of Sam Pitroda, has floated a proposal for a license fee to be paid by TV owners to fund the state-owned Prasar Bharti.

The move aims to generate annual revenue of around ₹1000 crore for the financially ailing body. A subscription model has also been suggested wherein niche channels are made 'pay' channels. The committee under Pitroda recognises the need to separate public service broadcasting and commercial broadcasting activities of PB.

(BS, 14.03.13)

TRAI Trims Roaming Tariffs

The Telecom Regulatory Authority of India (TRAI) has decided to reduce the roaming charges for the subscribers. The revised charges will come into effect from July under the "conditional free national roaming plans" clipping the maximum charges by at least 30 percent.

TRAI has instituted a new regime for providing flexibility to telecom service providers to customise tariffs for national roamers through Special Tariff Vouchers and Combo Vouchers.

The UBS report on the Indian mobile sector noted that "the reduction in ceilings will have minimal impact on operators' financials as current prevailing tariffs in the market are largely in line with updated ceilings".

(IE, 18.06.13)

• TRANSPORT •

Green Bypass for Road Projects

In a major relief to highway widening projects, the Cabinet allowed exemption of environmental clearance requirement for stretches up to 100 km in length. Earlier, this was for stretches up to 30 km, as a result of which most expansion projects required green nod from the environment ministry.

www.google.com

With this, over 70 percent of projects to be awarded in 2013 under government funding model (EPC) would not need to get the green approval. Out of the 9,500 km highway/road projects to be awarded this year almost 80 percent would be bid out on EPC mode. *(ToI, 28.06.13)*

A Regulator that did not take off

The Supreme Court directed the Federation of Indian Airlines to file a detailed affidavit, setting forth the tariff structure, "which shall fairly explain all the components and also the total fare which is collected from the passengers on the basis of these components, to and fro tariff as well as the maximum and minimum fare in a journey."

The court also asked the Directorate General of Civil Aviation (DGCA) to file a comprehensive affidavit, recording all instructions or orders passed on tariff fixing and collecting different charges from passengers.

Interestingly, the DGCA has always said it has little or no role in monitoring the airfares but airlines are supposed to submit their tariff plans and the regulator has the powers to act as a watchdog a role it has failed to perform. *(TH, 20.01.13)*

Pay More for Preferred Seat

The Ministry of Civil Aviation allowed five domestic airlines to charge for facilities they provide to their flyers. Now, passengers will need to pay for check-in baggage, in-flight meal/snacks/soft drinks, carrying sports gear/musical instruments, or using the airline lounge. The only exception is water.

The passengers will be given the opportunity to choose the services they want and pay for and the charges will be fixed irrespective of the base price of the air ticket. The airlines will have to show the cost of unbundled services on their websites and online travel portals. *(BL, 29.04.13)*

Bio-toilets in Trains in 6 Yrs

The Railway Board hopes to complete installation of bio-toilets in all 40,000-plus coaches of the Indian Railways by the year 2019. It will reduce the corrosion of railway tracks, keep the stations clean, it will save water and the on-board facility will be odourless. The whole scheme will also fit into the government's national scavenging policy discouraging use of human beings to clear the muck.

Installing bio-toilets in each coach costs around ₹3.5 lakh and for fitting the new toilets in an existing coach, the coach has to be taken out of operation. Railway will also face a major challenge in teaching passengers how to use the new toilets, as throwing napkins, bottles and use of highly acidic and alkaline cleaning agents will be prohibited in the bio-toilets. *(BL, 15.06.13)*

Rail Tariff Authority on the Anvil

The formation of the Rail Tariff Authority (RTA) is likely to be ready for the appraisal of the Cabinet. Proposed to be a five-member body chaired by a retired RBI Deputy Governor or retired Chairman of a PSU bank, the authority will also have retired railway officials like the rank of financial commissioner at the Railway Board with a 50-50 representation of experts and former railway bureaucrats.

Government as well as Planning Commission want it to be a mandatory body, as taking the powers of setting tariff in the railways away from the whims of future political dispensations would insulate the transporter from rising fuel bills and mounting cross subsidy from freight to passenger services. *(IE, 31.03.13)*

IGI to Slash User Charges

New Delhi's Indira Gandhi International (IGI) Airport, run by the GMR Group, may reduce airport charges as the operator is expected to have completed major capital expenditure on the airport when it submits its next application for approval of airport charges it plans to levy before the Airports Economic Regulatory Authority (AERA) in 2014, likely to be submitted in the next calendar year.

Aviation Minister stated that the aeronautical charges of Delhi and several other airports will come down in the next two years. Also, the airport and user development fee paid by passengers will come down in the next two years. *(Mint, 02.04.13)*

A Fair Way!

Under the current public-private-partnership (PPP) framework, where private players are awarded concessions to develop stretches against the right to collect toll from users for a specified period, the onus for securing the requisite regulatory approvals lies with the National Highways Authority of India (NHAI).

While private developers can be expected to take commercial risks arising from traffic or construction cost projections, and should not be bailed out for any wrong calls made there, but they definitely have a case when it comes to regulatory uncertainties and hence, entitled to claim a penalty from the NHAI, or at least a staggering of premium liabilities. *(BL, 01.05.13)*

• OIL & GAS •

Urea Price Increase Possible

The government may consider increasing the retail price of urea due to increase in pool prices of fuel feedstock. At present, urea is the only controlled fertiliser where difference between the cost of its production as assessed by Fertiliser Industry Coordination Committee and the statutorily fixed sale price, is paid as subsidy.

This ensures uniform sale price to the farmers besides a reasonable return on capital investment to the manufacturers.

Although, the Planning Commission favours freeing maximum retail price within a reasonable limit, the Department of Fertiliser does not support that, due to possibility of sharp increase in market price of urea. *(BL, 03.06.13)*

Gas Pricing Formula till FY17

The Oil Ministry has proposed the Cabinet to approve gas pricing formula recommended by the Rangarajan committee for less than four years as the Ministry has already engaged another panel to devise "market-determined" long-term gas pricing strategy.

The note for the Cabinet Committee on Economic Affairs (CCEA) has proposed new gas price between US$6.77 and US$10.84 per unit as calculated by different government departments after tweaking the Rangarajan formula.

Most of the country's natural gas is currently sold at US$4.20 per unit. The Cabinet note reiterated the government's strategy to have a globally competitive gas pricing policy in the long run. *(ET, 06.06.13)*

5-year Gas Pricing Regime

The Law and Justice Ministry has favoured a stable, five-year gas pricing formula, and also advocated a single price for all sources of gas. This could be put into effect from April 01, 2014, after approval of the CCEA.

This is contrary to the phased gas pricing regime, as suggested by the Planning Commission and the Petroleum Ministry. This approval paves the way for bringing the gas pricing policy before the CCEA after completion of the inter-ministerial consultations.

By giving its approval, it has stated that there does not appear to be any constitutional or legal objection to the proposal. *(TH, 18.06.13)*

SC Stay on Diesel Decontrol

The Supreme Court has stayed all proceedings in various high courts against moves to decontrol diesel, clearing a big hurdle in the implementation of the liberal fuel policy, which the government said was driven by concerns of fiscal prudence, energy security and freeing up funds for welfare schemes.

The government was facing legal challenges against its move to gradually align diesel prices to international levels and grant state oil firms the freedom to charge full market rates to bulk buyers such as railways, defence and state transport corporations. Bulk purchasers had challenged the policy in various high courts.

The Central Government, apprehending that multiple orders would be issued from different High Courts against its new policy, sought transfer of these petitions to the top court.

"The primary objective behind the pricing reforms... is the growing imperative for fiscal consolidation, the need for reducing the subsidy burden on petroleum products so as to allocate more funds to social sector schemes for the common man and for ensuring country's energy security in the long term," the transfer petition said. *(ET, 14.05.13)*

Policy for Shale Prodution

India will allow explorers including Oil & Natural Gas Corporation (ONGC) and Reliance Industries Ltd. to produce shale oil and gas for the first time as Asia's second-biggest energy consumer seeks to cut reliance on imports.

Under a new policy aimed at boosting domestic output of fossil fuels, companies will be allowed to extract oil and gas from shale rocks in more than 250 blocks the government has already given out. The new rules will allow ONGC, the nation's biggest, to start shale output almost immediately and in “substantial quantity” in about three years.

India, which currently does not allow exploitation of shale rocks, is trying to emulate the U.S., where a boom has reinvigorated industry and is leading the world's largest economy toward energy independence. *(Bloomberg, 01.04.13)*

Gas at Subsidised Rates

While producers will get a price determined by the Rangarajan formula, user industries of power and fertiliser may get gas at lower price with government subsidising the difference.

While defending the hike in natural gas prices from US$4.2 mbtu to US$8.4 mbtu, Finance Minister P Chidambaram hinted at subsidised gas rates for the power and fertiliser sectors to protect consumers from a huge financial burden from April 2014.

Briefing journalists here about the decision of the CCEA to hike gas prices based on the Rangarajan Committee formula from April 01, 2014, Chidambaram said the move to almost double the gas prices was taken in view of the dramatic decline in investments in the oil and gas sector. This had to be made up by importing expensive Liquefied Natural Gas. *(TH, 29.06.13)*

• POWER •

Odisha Project Hit by Land Issue

National Thermal Power Corporation (NTPC) may move its proposed 1,600 MW project from Darlipalli, Odisha due to delays in getting mandatory approvals from the State Government. NTPC has not yet awarded the letter of award (LoA) for the Darlipalli project, despite a delay of 18 months, as it does not have the requisite land acquisition and forest clearances.

The bids were given out in September 2011, and as the bid's validity period expired on January 31, 2013, BGR decided to withdraw from the Darlipalli project. Fresh tendering will be done by NTPC after forest clearance and land acquisition is completed. Bharat Heavy Electricals Limited (BHEL) was the L1 bidder, so NTPC may like to give the complete order to BHEL also.

(BL, 10.04.13)

Pay for 'Illegal Demand'

North Delhi Power Ltd (NDPL) has been directed by a consumer forum to pay ₹70,000 to a garment manufacturer for raising an "illegal" demand of over ₹9.5 lakh as outstanding dues and to waive off the alleged outstanding dues and late payment charges.

Garments manufacturer alleged that NDPL had threatened to cut the power supply to his establishment if he did not pay the inflated bill which was raised by the discom despite him having made regular payments.

The Forum noted that the arrears raised and late payment charges levied are arbitrary and without any basis. NDPL has neither filed any orders of assessments, nor filed any calculations to show how it arrived at the disputed figure in the bill.

(BL, 18.04.13)

Tariff Revision Petition Filed

As many as 19 states have filed tariff petitions for 2013-14 with electricity regulators and, of these, nine have already issued revised tariff orders. Discoms in another 10 states filed annual revenue requirement (ARR) petitions with regulators and are expected to revise tariff soon. In 2012 also, discoms from all states and union territories except Assam moved regulators for tariff revision.

Further, recent ruling of the Appellate Authority for Electricity empowered the State Electricity Regulatory Commissions (SERCs) to initiate suo motu tariff revision in case discoms fail to approach them on time.

Earlier, Discoms were taking bank loans to finance their cash losses arising from non-revision of tariff, but following the Reserve Bank of India's directive banks and financial institutions stopped lending to discoms.

(FE, 18.04.13)

Bottled Light in Schools

In a pilot project initiated by Hindustan Coca-Cola Beverages (HCCB), coke bottles have been configured to emit up to 55 Watts of light in the schools of Kudus and Devgaon Village, near Wada, Thane.

In a PET bottle filled with water, a little bleach is dropped to prevent mildew and mould, and then pieces of materials that reflect light are inserted. When the bottles are placed in an opening in the roof or a window, they absorb and emit light from the sun. A similar technology is used to light up low-income homes in the Philippines.

HCCB paid ₹300/bottle as installation cost. The project involved the installation of 30 bottles at three schools. Plans are on to evaluate the Wada project and expand it to neighbouring villages.

(BL, 14.04.13)

Correcting UMPP Bidder Error

Adani Power wants the committed buyers of power from its Mundra project to not only compensate it for the increase in imported (Indonesian) coal price since September 2011, but would also like the hapless discoms in Gujarat and Haryana to bear the extra import bill attributable to the rupee-dollar exchange rate change between 2007 and now.

Despite having won the contracts through tariff-based competitive bidding five years ago where it quoted non-escalable fuel charges apparently on the strength of its interest in Indonesian mines, the firm in its plea to the Central Electricity Regulatory Commission (CERC) sought an increase of around R1/kilowatt hour in fuel costs over the levelised tariff quoted at the bidding stage.

(FE, 16.04.13)

Power Tariff Hike

The Delhi Electricity Regulatory Commission (DERC) hiked the rates by 1.5 percent to adjust the power purchase cost of the distribution companies. The DERC has fixed 4.5 percent fuel surcharge for BSES Yamuna Power Ltd and BSES Rajdhani Power Ltd while for Tata Power Delhi Distribution Ltd the surchgarge will be 3 percent. The hike in tariff will be 1.5 percent for consumers of all the three distribution companies.

www.timesofindia.indiatimes.com

Rajasthan is set to announce a power tariff hike next month as losses of its distribution companies have piled up to a staggering ₹50,000 crore as on April, the highest among all Indian states. This would be the third straight hike in three years for the state, which exhibits all characteristics of electricity distribution mess.

The Punjab SERC ordered an average 9.06 percent hike in power tariff. As a result, power consumers in the state will have to cough up an additional ₹1,782.50 crore in the current financial year. In addition, any increase in fuel cost during the fiscal year will also be passed on to the consumers.

(TH, 11.04.13; BS, 15.05.13; & IE, 05.05.13)

• MIXED BAG •

Changes in KYC Norms

The RBI clarified that there is no transactional evidence of money laundering in the top three private sector banks (ICICI, HDFC and Axis) involved in the Cobrapost expose.

"In none of their branches there was a case of money laundering. No transaction has taken place," said K C Chakrabarty, Deputy Governor, RBI.

He also said that the regulator was examining changing the way business is done, including KYC (know your customer) norms. Further, he mentioned that there are robust checks and balances in the banking system.

If necessary, as and when needed, banks and the RBI will take corrective measures. RBI is undertaking thematic review in 34 other banks following the Cobrapost expose. *(BL, 23.04.13)*

Increase in Penalty Limits

The RBI will now be able slap a penalty of ₹1 crore on banks if they breach a single norm. If more than one norm is breached, then the fine will be multiples of ₹1 crore. Earlier, the fine was ₹5 lakh for a single violation.

The new norm came into effect after amendment of Section 46 of the Banking Regulation Act in the winter session, and will be applicable to violations occurs after its notification. In the past, there were instances of RBI slapping a penalty of ₹55 lakh, on violation of 11 norms by a bank.

Fines have been imposed for contravening various norms, such as KYC, ant-money laundering, norms of foreign exchange derivatives, among others. *(BS, 20.04.13)*

Overhauling Financial System

"A complete overhaul of the current financial sector regulatory architecture is essential if India wants to become a US$14tn economy by 2025", said Chairman of the Financial Sector Legislative Reforms Commission (FSLRC) and former Supreme Court judge Justice BN Srikrishna.

The FSLRC submitted its report to Finance Minister P Chidambaram in March 2013 and called for the creation of a unified financial agency that would subsume sectoral regulators and also limit the role of the RBI to monetary management.

Srikrishna's comments come days after Chidambaram had indicated that enacting the Indian Financial Code (proposed by FSLRC) could take time but had said that the ministry would try to implement all recommendations that do not need legislative backing. *(IE, 29.05.13)*

Haryana Bars ICICI Pru

The Haryana government has barred ICICI Prudential Life Insurance for three years from doing any further business with it for 'intentionally delaying' the process of distribution of annuity to land owners and failure to carry out commitments.

It can, however, opt to pay a penal interest at a rate of one percent, on the amount advanced to it (and interest calculated at SBI base rate) for the period from the receipt of advance till its repayment, for every six months or part thereof, as compounding fee, in lieu of the entire blacklisting period, or part thereof, within one month of the date of the order. *(TH, 18.04.13)*

FM Calls for Bank Mergers

The Finance Minister recently spoke in favour of mergers in the banking industry so that the country could have two or three global-sized banks. He observed that some public sector banks among 26 public sector banks that we have, may be better off merging. There is a need for two or three world sized banks in an economy that is poised to become one among the five largest in the world.

He further said that while restructuring may be needed in some sectors, mergers may reduce competition in certain segments or geographies substantially and may alter competition between banks and non-banks. *(TH, 21.05.13)*

SEBI Seeks More Powers

The Securities & Exchange Board of India (SEBI) has given suggestions to the government for strengthening of the SEBI Act, to improve trust of the ordinary investors. It has asked for power to recover penalties, like other regulators such as the Competition Commission of India (CCI) have.

This is in light of huge delays in recovery and large amount pending. It has also requested the right to demand, produce documents, enter into premises, search and seizures, freezing of bank accounts, as such other powers.

SEBI has also asked for power to get access to call data records. In a case of insider trading or a serious case of market manipulation, such access is required, according to SEBI. *(Mint, 22.05.13)*

RBI to Regulate Home Loans

The State Bank of India suggested that the RBI should be the regulator for all home loans provided by banks or housing finance companies. Banks currently account for more than two-thirds of total home loans disbursed in the country. A single regulator having the same rules for all players would help remove the regulatory arbitrage that exists between banks and HFCs (such as difference in rules on teaser loans).

Currently, RBI regulates home loans provided by all commercial banks, while housing finance companies like HDFC, LIC Housing Finance also offer home loans that are regulated by the National Housing Bank. *(FE, 19.05.13)*

A Misguided Coal Policy

A parliamentary panel looking into the way coal blocks are allotted to power and steel companies has found fault with this process, dating as far back as 1993. Ironically, the United Progressive Alliance (UPA) may get some succour from the report that pretty much points the finger at all governments that have ruled India since 1993 the Congress, the United Front (or the Third Front), the Bharatiya Janata Party-led National Democratic Alliance, and the Congress-led UPA. To be sure, as Mint reported in September 2012 (CBI to investigate all coal block allocations since 1993), since 2004, when the UPA came to power for the first time, there has been a surge in the allotment of coal mines.

Mint

Yet, that is not the most important contribution of the report. A between-the-lines reading highlights far more important issues. The current policy of allotting so-called captive mines to companies was seen as a workaround to mitigate the damage caused by the nationalisation of coal mines, but, over the years, it is clear that it has become a hotbed of crony capitalism and political corruption. That alone should serve as a lesson that no amount of tweaking can address the damage wrought by a misguided policy decision.

The all-too-obvious solution is a new policy that balances the interests of the state, the customers of coal (power and steel companies), and the people of India. The policy needs to be transparent, not just in terms of how mines are allotted but also to whom. The identity of companies being allotted the mines and their provenance is especially critical at a time when politicians of all hues have figured out that setting up companies, promoted by their relatives or associates is an effective way to monetise their political power and influence.

An inherently flawed approach to resource allotment has allowed politicians to indiscriminately reap and bestow benefits

The policy also needs to balance larger developmental and social objectives with the need to maximise revenue from the allotment of resources. And finally, it needs the buy-in of state governments, because, in many cases, they are the ones compensated by entities allotted the resources.

An auction may or may not be the best way to allot a natural (and national) resource, but it does ensure transparency. If larger social and developmental objectives mean an auction is not possible, then the policy should mention these, and also institute a mechanism to track the achievement of these ends.

An inherently flawed approach to resource allotment has allowed politicians to indiscriminately reap and bestow benefits. While it is important to crack down on known instances of these, it is also important to distinguish them from honest decisions based on the policy of the day, no matter how flawed that policy may have been. And it is even more important to address the larger policy problem.

* *The news item appeared in the* Mint *on April 24, 2013*

Shape of Regulator

Timsy Jaipuria*

The Ministry of Road Transport and Highways has fast tracked the process of setting up a road regulatory authority. The first inter-ministerial meeting on the topic last month highlighted the issues relating to the framework for setting up the independent regulator.

The idea is not to create a parallel body to the National Highways Authority of India (NHAI). The Minister of Roads Transport and Highways CP Joshi, while talking to the stakeholders at the meeting, reportedly said that the need of the regulator was to address the growing challenges of liquidity constraints, contract management, contract re-negotiations, and technical and safety aspects.

The Minister had lamented "the lack of a concrete, implementable institutional framework in place to address user complaints", and insisted on the need for "uniformity and transparency" in technical and safety aspects.

He felt that "the regulatory framework for the road sector should blend the best practices from prevalent regulators across the country."

In the absence of an effective regulator, many disputes have landed in the courts for example, the Delhi-Gurgaon Expressway, where toll collection was stalled for more than a month. Moreover, several claims have remained unpaid despite arbitrator awards and high court judgments in favour of contractors. This has been affecting the liquidity of contractors and has severely constrained their ability to pursue upcoming Engineering, Procurement and Construction (EPC) projects as well as the ability to invest equity in upcoming build-operate-transfer (BOT) projects.

Road Ministry Secretary Vijay Chhibber felt that an independent regulator would best address the conflicting issues and provide enhanced reliability to private sector entities in the overall framework and reduce the burden on implementation agencies.

NHAI Chairman RP Singh argued for a well-structured mechanism that has autonomy, accountability, with well-laid out road map to deal with issues pertaining to state support agreements, disputes on alignment, toll justification, and location of toll plaza.

The Confederation of Indian Industry (CII) representatives felt that the regulator would bring transparency and clarity in entry criteria, toll setting, defining service quality standards, amending model concession agreements, and introducing new public-private partnership (PPP) models. The regulator could also define the conditions under which existing concessions would be revisited, the industry representatives argued. They, however, wanted the regulator to go beyond disputes and focus on development and act as a facilitator.

However, there is a view within government that overburdening the regulator would reduce its efficacy, and the regulator cannot be the answer to all problems facing the sector. "We have already formed a core group comprising of industry and other stake holders to expedite the process", as hinted by Joint Secretary handling the issue, Rohit Kumar Singh.

Currently the highway sector is undergoing a financial crisis. There are issues relating to debt and equity funds, environmental clearances and land acquisition, to name a few. Experts feel that if the regulator can be constituted quickly and armed with independent powers, it will revive investor interest in the sector and speed up road development.

* *Leading Columnist, Indian Express. The article appeared in the* Financial Express*, on May 01, 2013*

Who Benefits from Fuel Subsidies?

David Coady* and Thomas Richardson **

Many countries seek to protect poor households by subsidising the consumption of fuel products. However, recent research by the International Monetary Fund (IMF) shows that fuel subsidies are both inefficient and inequitable, including in India.

At a global level, a major new cross-country study by IMF showed that fuel subsidies generally crowd out high-priority public spending (such as on health, education and infrastructure), put pressure on current account deficits, distort productive investment towards energy-intensive sectors and technologies, and contribute to global warming. Fuel subsidies are the opposite of carbon taxes, after all. But the study (available at: www.imf.org/subsidies) also showed that fuel subsidies are regressive, meaning that they actually benefit the rich much more than the poor.

Averaged across a large number of low- and middle-income countries, the study found that the top 20 percent of households capture six times more in benefits from fuel subsidies than the poorest 20 percent.

It's because upper-income households consume a lot more fuel products than poor ones, especially petrol, which is the most regressive fuel product to subsidise. By contrast, kerosene is the least regressive product to subsidise.

A new IMF working paper (http://bit.ly/137nyEm) shows clearly that India's fuel subsidies are both fiscally costly and socially regressive. In per capita terms, the top 10 percent of Indian households spends more than 20 times as much on fuel as the poorest 10 percent (including both direct and indirect consumption the latter being when food, for example, is transported to the market using subsidised fuel).

A new IMF working paper shows that India's fuel subsidies are both fiscally costly and socially regressive

If fuel products were moved to market prices, the top 20 percent of households will pay six times more for fuel per person each month, than the poorest 20 percent. Put another way, the bottom 40 percent of families could be fully compensated for the move to market prices for less than one-fifth of what government now spends on fuel subsidies, leaving significant savings to invest in roads, schools and hospitals.

Of course, the example above assumes no leakage of benefits, and that's a major challenge in India at this stage. But even if half of the efficiency gain were to be lost to leakage, fuel subsidy reforms will still create a lot of fiscal space in India's budget for high-priority spending. In this respect, the Indian government's plan to improve the targeting of fuel subsidies is particularly promising.

Fuel subsidies were touching 2 percent of India's gross domestic product. This was crowding out more productive public spending. Realising this, the Union government has taken bold steps over the past nine months to reduce fuel subsidies. Diesel prices have been rising systematically, subsidised cooking gas cylinders per household have been capped and state electricity boards have been encouraged to set more cost-reflective power tariffs.

These measures are welcome, as they also help to take pressure off the worsening current account deficit. But what has not been widely remarked upon is that reducing fuel subsidies can be seen as a pro-poor measure.

* *Deputy Division Chief of the Expenditure Policy Division, Fiscal Affairs Department, International Monetary Fund (IMF)*
** *IMF's Senior Resident Representative in India and Nepal*
The article appeared in the Mint*, on June 11, 2013*

51% FDI in Multi-brand Retail

After getting a go-ahead signal on 51 percent FDI in multi-brand retail from the Supreme Court, the government is planning to chalk out few new rules for attracting foreign investors to invest in the retail sector in India. So far the steps taken by the government to open up retail sector has failed to woe foreign companies due to several ambiguities related to investment process.

There are various issues that require immediate action from the part of government. About 12-14 investors are waiting for some clear policy regarding sourcing from small enterprises in India. Also issues like state permission, high initial investment in back end infra etc. requires immediate attention from government in order to ensure high investment from abroad. *(ToI, 02.05.13)*

No Consensus on GST

State governments have not been able to arrive at any conclusion regarding implementation of the proposed Goods and Services Tax (GST) regime. It makes it further impossible for the Centre to timely execute much awaited tax reform in the country. Sharing of revenue, once the GST model is implemented remains the main bone of contention between the Centre and states.

In a meeting of empowered committee of state finance ministers held in Mussoorie, representatives do agree upon certain critical issues such as exemptions under GST and issue regarding dual control on traders by the Centre and states.

However, it does not seems to be enough for rolling out GST and with general election scheduled for 2014, it is most likely that Centre would miss yet another deadline of implementing GST. *(Livemint, 11.05.13)*

New Industrial Policy for Punjab

Punjab is all set to roll out new industrial policy in order to give a big push to industrialisation in the state. The policy is targeted at providing liberal package of fiscal incentives tfor manufacturing sector, integrated textile units, agro and food processing sector, electronics hardware and information technology.

The policy would provide incentive to the manufacturers on Value Added Tax and Central Sales Tax, electricity duty, stamp duty, property tax etc. Further, the policy also focuses at promoting small and medium enterprises (SMEs) in the state by offering up to 50 percent of the fixed capital investment in form of incentive.

Deputy Chief Minister of Punjab, Sukhbir Singh Badal termed it as aggressive policy which would play the role of catalyst in terms of promoting industrial development as well as attracting fresh investments in the state. *(BS, 04.06.13)*

IKEA's ₹10.5k cr Plan Okayed

The retail giant IKEA scored another point in its endeavour towards establishing chain of stores by investing ₹10,500 crore in India as its plan has now been approved by the CCEA. The proposed investment by the Swedish retailer of furniture would be the largest in terms of volume by any oversees company in Indian retail sector.

Mikael Ohlsson, President and CEO, IKEA group has termed entire development as very positive and said that it would help IKEA to increase sourcing from the both existing and new suppliers in India. He also shared his company's growth plan of surpassing US$1bn in product sourcing from India, from present value of US$450mn.

Commerce Minister Anand Sharma also hailed the entire progress made in this direction. He said that it would help in providing an opportunity to small and medium enterprises in India in getting integrated into global value chain. *(ToI, 03.05.13)*

Energy Consumption on Rise

Energy consumption in India has registered higher growth rate over the past three decades as compared to gross domestic product (GDP) growth rate. For energy consumption the compounded annual growth rate has been 5.96 percent while the GDP has remained slightly below at 5.7 percent for the same period.

These statistics clearly points that there is urgent need for fuel price reforms in the country as the consumption of the subsidised fuel such as LPG, petrol and deisel has shown upward trend while those whose prices are market linked such as kerosene has gone down.

Country's increasing dependence on crude oil and coal imports is a worrying factor which has resulted into mounting fiscal deficit in the past few years. *(FE, 16.04.13)*

New Guidelines on FDI

In a bid to provide more leverage to investment coming through foreign routes in India, government has framed new comprehensive guidelines to simplify process related to Foreign Direct Investment (FDI). The guidelines basically focus upon enhancing inflows into multi-brand retail sector and also to permit Pakistani companies to invest in India.

The move also includes policy reforms in the sectors such as asset reconstruction companies, power exchanges, civil aviation, broadcasting and non-banking financial sector. These reformatory steps would also complement several decisions regarding increasing FDI cap in the sectors such as retail, aviation etc., taken by the government in the past one year.

The policy also includes eight mandatory conditions and one optional clause in relation to converting a company with FDI into a Limited Liability Partnerships firm. *(TH, 07.04.13)*

Tightening Constraints to Inclusive Development

Shankar Acharya*

The current economic discussion focuses on managing the ongoing stresses on our external finances and an almost desperate search to revive economic growth from its meagre five per cent annual rate. Today, let us lift our gaze beyond these short-run exigencies and assess the prospects for reverting to a high (and inclusive) growth trajectory in the medium term. To keep it manageable, let us focus on just four such constraints, which have strong sociopolitical roots that render them especially intractable.

Anti-employment Laws

20 years after a draft Cabinet note was readied to loosen our exceptionally restrictive labour laws, no progress has been achieved. 65 years after Independence, over 90 percent of our 500-million strong labour force ekes out its living in "informal sector" occupations with scant job security and low incomes. Industrial employers have every reason to avoid taking on new "regular" employees and to shy away from large-scale operations in labour-intensive sectors like textiles, garments, leather products, toys and electronics.

Rapid and inclusive growth in the medium term does not look too likely if one examines the array of unattended constraints

In sum, our labour laws continue to grievously weaken the most effective mechanism for assuring "inclusiveness" in the development process for our most abundant resource of low-skill labour.

Fiscal Populism

Broadly defined, the second major constraint on rapid, broad-based growth is the penchant for fiscal populism, fuelled by competitive, short-horizon politics at all levels of government. This has at least two dimensions: a propensity for premature launching of ill-designed entitlement programmes; and a widespread "subsidy culture". The first has been massively strengthened during the last nine years of the UPA government, without first undertaking the reforms necessary to make these programmes effective and efficient.

The second, "the subsidy culture", has a longer history and continues to undermine the economic viability of key sectors. Electricity subsidies have contributed majorly to the parlous situation of our electric power sector. The growing subsidy on urea fertiliser has seriously weakened soil fertility. The massive diesel subsidy has weakened energy security and hurt the environment. The explosive growth of mobile telephony in the last 15 years has demonstrated that subsidies are unnecessary for high growth and inclusive reach of a sector.

Weaknesses in Governance and Administration

Governance and administration are huge subjects. First, over time, politics has become more of a "business" and less about public service and ideological commitment. Huge sums are raised and spent on campaigning for office and "politicking" between elections, which have then to be paid off by various subversions of public policies and decisions. "Crony capitalism" has increased greatly, especially in resource sectors, such as mining, land allocation/use, telecom spectrum and large government contracts.

Secondly, it is generally agreed that the quality and probity of civil services have worsened over time for many reasons, including: the quality of entrant); the ramping up of caste-based reservations or quotas since 1990, which has severely diluted the meritocracy principle; the increasing "politicisation" of public administration at all levels and the growing spread of bribery and corruption in government-citizen transactions.

The Challenge of Urbanisation

The expected increase in India's urban population by over 200 million between 2010 and 2030 poses a daunting challenge for urban governance. Without a much more serious effort at urban institution building by the central and state governments, the realistic prospect is for rapid expansion of ill-governed and under-financed urban habitations, which impede the reaping of the economies of agglomeration associated with well-functioning cities and towns. Such inchoate urbanisation may prove less an asset and more a drag on rapid, inclusive development in the long term.

So, all things considered, the return to high growth with inclusion poses arduous challenges in the years ahead.

* *Honorary Professor, Indian Council for Research on International Economic Relations and former Chief Economic Adviser to the Government of India. Abridged from an article that appeared in the* Business Standard *on June 12, 2013*

ADB Projects Slow Growth

Asian Development Bank has lowered the growth projection of India from 6.5 to 6 percent. The Manila-based multilateral lender stressed that India must create a more favourable environment for investment to return to high-growth path.

Giving reasons for lowering the growth projection in 2013-14, Abhijit Sen Gupta, an economist with the India Resident Mission of ADB, said that monetary easing was lagged while investment activities were affected.

The agency also said that the forecasts are subject to risks like another bad monsoon, slow headway on fiscal consolidation and reforms, and continued sluggishness in the global economy. Inflation in 2013-14 is seen at 7.2 percent, easing back to 6.8 percent the following year.

(BL, 10.04.13)

M&A Deals Fail to Create Value

Three-fourths of the acquisitions made by local firms have failed to create substantial value from the deals and 59 percent of the acquirers have actually destroyed value within a year of closing a deal, according to a study by consultancy firm KPMG.

Between 2005 and 2011, Indian companies did about 1,100 deals with a total deal value of about US$75bn, according to estimates by Grant Thornton, a consulting and audit firm. According to Varun Gupta, Director, Integration and Separation Advisory for KPMG in India, acquisitions in India have not offered the value-add expected from them. Post transaction, most people lose interest in the acquired asset and do nothing new, often letting it run the way it was running. *(Mint, 08.04.13)*

Drop in Consumer Confidence

Owing to rising inflation and weak employment conditions in the country, the Consumer Confidence Index has dropped down to 41.4 points in April, according to the financial information and content company, Blufin.

Present Situation Index, which measures consumer confidence in the current economy, decreased by 0.1 points to 44.6, while Future Expectations Index, which measures consumer outlook for the next 12 months, also dropped by 0.5 points to 40.0, suggesting increasing pessimism about the future.

However, consumer confidence increased significantly in South India, while declining in all other regions. North India saw the steepest decline of all, 4.3 points in confidence levels. *(BL, 10.05.13)*

India Slips on Basic Education

India has been placed at the fourth position from the bottom in terms of the number of children out-of-school, by a recent study done by the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

However on a good note, the political will to provide wider access to education, in the form of the Right to Education Act, has helped reduce the number of out-of-school children from 20 million in 2000, to 2.3 million in 2006 and 1.67 million in 2010-11. Nigeria, with 10.54 million out-of-school children is at the very bottom of the list, while Pakistan comes second-last with 5.43 million.

With about 57 million children being out of school globally in 2011, the world is far from achieving the target of ensuring that all children get proper schooling by 2015 one of the millennial development goals of the UN. *(BL, 10.06.13)*

OECD Lowers India's Growth

The Organisation for Economic Co-operation and Development (OECD), has lowered down India's growth estimate to 5.3 percent for 2013 from 5.9 percent, and cautioned that structural bottlenecks could further constrain investment and growth potential.

The OECD Economic Outlook report said, however, that the "GDP growth is projected to rise gradually over the next two years." Talking about India's neighbour China, the OECD forecast that its economy would grow 7.8 percent in 2013, down from a previous estimate of 8.5 percent. It said India was likely to improve growth to 6.7 percent in 2014, after having logged a decade's low of 3.8 percent in 2012.

(TH, 30.05.13)

India Shining for Super Rich

The world is home to 1.2 crore millionaires with a collective net worth reaching a record high of US$46.2tn, with India clocking the second highest growth of 22.2 percent in its HNI population in 2012 after Hong Kong, a World Wealth Report 2013 said.

The growth in number of high net worth individuals (HNWIs) in India was attributed to positive trends in equity market capitalisation, gross national income, consumption and real estate.

As many as one million individuals joined the global HNWI population, which reached 12 million, reflecting an increase of 9.2 percent. *(BL, 19.06.13)*

Poor Living as Low as ₹17/Day

Poorest of the poor in India are surviving on barely ₹17 a day in villages and ₹17 a day in cities, as per the latest data released by the National Sample Survey Office (NSSO). According to the 2011-2012 (July-June) data, five per cent population on the bottom rung had an average monthly per capita expenditure (MCPE) of ₹521.44 in rural areas and ₹700.50 in urban areas.

The NSSO's 68th round of survey is based on samples consisting of 7,496 villages in rural India and 5,263 urban blocks except some remote areas, during July 2011-June 2012, the release said. *(BL, 20.06.13)*

Corporate Governance Failure at Ranbaxy?

Asish K Bhattacharya*

Ranbaxy's criminal guilty plea and US$500mn in fines and penalties has brought back the spotlight on corporate governance. The criminal case focused on sales in the US market. However, if media reports are to be believed, Ranbaxy committed systemic fraud in its worldwide regulatory filings. The US case dates back to the year 2004. This is the initial year when the Corporate Governance Code, which was issued by Sebi in the year 2000, was made mandatory. Therefore, it is quite likely that many independent directors had no clear idea about their responsibilities and accountability. But that cannot be said about independent directors on the Ranbaxy Board.

Ranbaxy systematically perpetrated fraud on shareholders by exposing their investment to huge reputation and compliance risks by fuzzing data submitted to regulators. By selling adulterated drugs, it perpetrated fraud on consumers, hospitals, value chain partners and common Indians who took pride that Ranbaxy had emerged as the first Indian multinational in the pharmaceutical sector.

The corporate governance failures manifested in the Board's failure to check fraud, absence of adequate risk management system, and unethical culture. Should we hold independent directors accountable for the same?

There is a similarity in the fraud at Satyam and the same at Ranbaxy. In both cases, the top management overrode the internal control system. On January 02, 2013, southern district of New York judge Barbara Jones gave a landmark judgment. The judge did not see a case of the former independent directors of Satyam acting recklessly.

The claim was not sustainable because "intricate and well-concealed fraud perpetrated by a very small group of insiders and only reinforce the inference that the [independent directors] were themselves victims of the fraud." It may be argued that the Ranbaxy fraud was perpetrated with the support of employees at different levels and not by a small group at the top level. But the fact remains that it was well concealed. Therefore, it would be harsh on independent directors if they were held accountable for the fraud.

Clause 149 (11) of the Companies Bill, 2012, provides that an independent director shall be liable "only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently".

It is unlikely that independent directors on Ranbaxy Board had no exposure to corporate governance models

Assume that independent directors had taken notice of that and arranged exit-interview and interacted with the employees at random to know the cause of their exit. I guess that process would have been futile, as none would have blown the whistle in the absence of protection to whistle-blowers.

Independent director's responsibility is limited to ensuring that he/she understands the business model, best corporate governances practices (e.g. board process, risk management system, internal audit and statutory audit, whistle-blower policy, and transparency within and outside the Board) are in place and operating effectively, analysing information available through the Board processes or otherwise and acting proactively based on that analysis for the benefit of the company as a whole.

If independent directors are held responsible for frauds perpetrated by or with the support of the top management, which has the ability to override internal controls, it will be difficult to induce professionals to join Boards of companies as independent directors.Viewed sceptically, the right to education with its 25 percent reservation clause, promoting public-private partnership to provide basic infrastructure and essential services and now mandating CSR spending, seems to further this idea. Against this background, should there not be a larger debate on what is a better option, to increase corporate tax rates instead of mandating CSR spending by firms?

---

* *Director, International Management Institute, Kolkata. Abridged from an article that appeared in the* Business Standard *on June 10, 2013*

PPP under RTI Ambit

As per the new guidelines issued by the Department of Personnel and Training (DoPT), Public Private Partnership (PPP) will come under the ambit of RTI. According to DoPT since public services are proposed to be provided through PPPs, all information relating to PPPs, including financial detail, procurement information, Comptroller and Auditor General (CAG) and Public Account Committee paras, must be disclosed in the public domain by the public authority entering into PPP contract/concession agreement.

Each ministry/public authority has been asked to ensure that the guidelines are fully operationalised within a period of 6 months from the date of their issue. Section 4(1)(b) of the RTI Act lays down the norms for information that should be disclosed by public authorities on a suo motu basis. *(BL, 23.04.13)*

Govt. to Protect Consumers

The government is drafting a policy on the direct-selling industry to address the concerns of consumers and strengthen the credibility of the sector that is providing huge employment opportunity. The industry sells various consumer products directly to customers rather than via retail shops.

New market practices like money back guarantee, cooling off period and return policies would be incorporated in the policy to strengthen the credibility of this market.

Consumer Affairs Secretary Agarwala said it was necessary to adapt best marketing practices in the integrated global market. Indian Direct Selling Association (ISDA) Chairman Amarnath Sengupta said direct selling has moved beyond cosmetics to include technology products, herbal medicine to garments. *(Mint, 17.04.13)*

Annual Service Survey

The government is going to launch an Annual Service Survey to create the first official database of the sector. The survey is expected to improve national accounts which are presently understated and could eventually be dovetailed with the Annual Survey of Industries to create and Annual Business Survey.

The survey of the service sector will include all enterprises engaged in activities outside agriculture and manufacturing that employ eight or more workers. This will bring in even sectors like real estate and construction which are right now not officially tracked. This will enrich national accounts and settle a long pending problem of under-estimation. *(ET, 08.05.13)*

GoM to decide CSS numbers

A GoM will now decide the numbers of centrally sponsored schemes (CSSs) after ironing-out differences between the Finance Ministry and the Planning Commission. Finance Minister, Chidambaram in his budget speech stated that the proliferating CSSs will be restructured into 70 schemes.

A committee set up under BK Chaturvedi has suggested reducing the CSSs to 59 from 147. The Planning Commission wants the number to be 70 but is less fixed on the exact reconfiguration and is emphasising more on flexibility to states, flexi-funds and the flagship schemes under the proposed restructuring of CSS. *(ET, 14.05.13)*

Broadband for Panchayats

Under the Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA) scheme, about 2-lakh panchayats would be brought under broadband facility by the end of 2014. Out of a total of 246,000 panchayats in the country, 50,000 have already been brought under broadband facility.

The main objective of RGPSA was to strengthen the local self-government institutions that implement development projects of the Central and state governments and improve the infrastructure facilities. *(BL, 15.06.13)*

₹5000-Cr innovation fund

A dedicated ₹5000-Cr fund, namely India Inclusive Innovation Fund, has been planned to be set up in India to boost scientific innovation to improve life of the common man. The fund was proposed by the National Innovation Council.

As per the Financing Minister, Chidambaram, the Union Government will initially contribute ₹100 crore to this fund. The fund is based on the principle that innovative enterprises can profitably, with scalability, and competitively engage citizens at the lower strata of economic pyramid. *(BL, 02.05.13)*

CAG REPORTS

Govt. Pulled Up

The CAG has taken the government to task for arbitrarily fixing the minimum support price of food grain crops and for inadequate norms on buffer food grains to meet contingencies during the audit period of 2006-2007 and 2011-2012. In its report tabled in the Parliament, CAG further suggested that government increase the procurement to meet the growing demand. It observed that only 45 percent of the total food grain production in the country made its way to the mandis. *(ET, 08.05.13)*

NHAI Loses on Project Delays

According to the CAG of India, delay in completion of port road connectivity projects and loss of toll revenue had resulted in a loss of toll revenue had resulted in a loss of around ₹873.85 crore to the NHAI. The CAG in its report observed that there was a delay in formation of special purpose vehicles (SPVs) and award of contracts in various projects. None of the projects was completed by the scheduled completion date. *(BL, 30.04.13)*

JPC Blames CAG

The draft Joint Parliamentary Committee report on the 2G scam, while giving a clean chit to the PM, has said the CAG's 2G audit report is responsible for 'pitching the country amongst the most corrupt nations in the world'. The report draws multiple conclusions against the CAG, overruling the Supreme Court's findings in its orders of March 12, 2010 and February 2, 2012, related to the 2G scam. *(TH, 24.04.13)*

Reforms as a Scapegoat

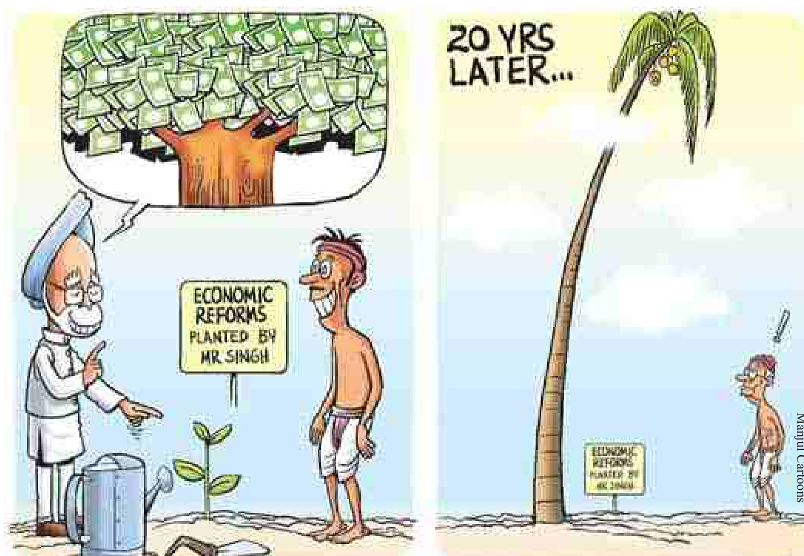
Ravi Shanker Kapoor*

Social activist Aruna Roy's resignation from the National Advisory Council has brought the organisation into the limelight. On the face of it, the resignation may appear baffling. But a closer look will show that it is a shrewd scapegoating manoeuvre.

An examination of the NAC-inspired policies and laws, including the Right to Information, 2005 (RTI) Act and the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA), the Forest Rights Act, 2006 and the Right of Children to Free and Compulsory Education (RTE) Act, 2009; points out that, though the RTI had a long history and many people, including Anna Hazare, Justice P B Sawant and H D Shourie, worked for it earlier or the communist parties played an important role in the rural job guarantee scheme, yet it is indisputable that the Sonia Gandhi-headed NAC was instrumental in bringing in these laws.

The RTI Act was introduced for setting out the practical regime of RTI for citizens to secure access to information under the control of public authorities for promoting transparency and accountability in the working of every public authority. The right has been used by activists and others to expose many anomalies in governance and bureaucratic functioning, but this surge of information has not improved public accountability; otherwise, corruption scandals would not have grown the way they have in the last few years.

The Forest Rights Act intended to recognise and vest the forest rights and occupation in forest-land, in forest dwelling Scheduled Tribes and other traditional forest dwellers. Although, the law has not improved the condition of Scheduled Tribes or other forest dwellers, yet it has become a tool in the hands of those who are doctrinally opposed to private sector-led industrialisation.



Most NAC-dictated laws and policies have been economically and fiscally flawed

The RTE intends to provide free and compulsory education of all children in the age group of 6-14 years as a Fundamental Right in a manner as determined by state or law. However, the Annual Status of Education Report 2012 by NGO Pratham highlights that in 2008, the proportion of children in Standard 3 who could read a Standard 1 text was under 50 percent, which has now dipped to nearly 30 percent. A child in Standard 3 has to learn to do two-digit subtraction, but the proportion of children in government schools who can even recognise numbers up to 100 correctly has dropped from 70 percent to near 50 percent over the last four years with the real downward turn distinctly visible after 2010, the year RTE came into force.

MGNREGA aims at enhancing the livelihood security of people in rural areas by guaranteeing 100-days of wage-employment in a financial year to a rural household whose adult members volunteer to do unskilled manual work. The scheme has clearly failed in its primary objective.

According to Planning Commission, agricultural employment came down from 258.93 million in 2004-05 to 244.85 million in 2009-10. In the previous 5-years, on the other hand, it had increased by more than 21 million.

Similarly, in manufacturing sector the number of jobs came down from 55.77 million in 2004-05 to 50.74 million in 2009-10. Again, there was a huge jump in the previous five years. For a big employer like Manufacturing, the decline of employment in manufacturing is as amazing as it is depressing.

It is important to question the government but not the quixotic coterie that shapes some of its key policies. This is not just an instance of power without responsibility, but also of extreme self-righteousness. It is almost as though villains need to be invented since the reality has failed to conform to the plan chalked out by NAC. And what better than "pro-reforms and pro-growth" scapegoats?

* *Freelance Journalist. Abridged from an article that appeared in the* Business Standard *on June 06, 2013*

Dispute Resolution in PPP

The Prime Minister's Office (PMO) has asked the Planning Commission to formulate a draft Bill on dispute resolution in public contracts, in consultation with all stakeholders and ministries.

According to a PMO statement dispute resolution in large public contracts is an area of growing concern with dissatisfaction rising among private sector participants arising from the responses received from project authorities about their obligations.

Private companies say that lack of proper dispute resolution mechanism increases costs, lowers returns on investments and delays projects. PMO has acknowledged the need for an 'institutional arrangement' to address the disputes to provide assurance of speedy resolution.

(*BL, 17.05.13*)

Consensus on Land Acquisition

The Land Acquisition Bill has been cleared by the government by accepting BJP's demand regarding leasing land and compensation reaching the original farmer-owners. The government has agreed that individual states can pass legislation regarding leasing of land and limits of acquisition.

The Bill that places resettlement and rehabilitation on the same footing as acquisition, will replace the Land Acquisition Act, 1894 once cleared by Lok Sabha. The Bill provides for 4-times market value as compensation in rural areas and 2-times in urban area and stipulates that 80 percent people should consent acquiring land for private industry.

A provision of the Bill that gives powers to amend the schedule should not be misused to dilute the compensation, rehabilitation and resettlement package.

(*TH & BS, 19.04.13*)

Fin Bill Gets Nod

The new Finance Bill has provided assurances to foreign investors by deleting the controversial wordings on tax residency certificates. The Bill has ruled out imposition of wealth tax on urban land classified as farm land or used for agricultural purposes.

Cash purchase of gold jewelry less than 10 gms will attract one percent tax. From June onwards, the tax on interest payment to foreigner investors in rupee denominated government and corporate bonds will reduce to 5 percent from 20 percent. This move is expected to attract foreign investment in debt market to help trim a widening current account deficit. This would be effective for two years starting from June.

(*ToI, 01.05.13*)

Mental Healthcare Bill Passed

Cabinet has cleared the Mental Health Care Bill, 2013 making access to mental health care a right of all persons by trying to make such services affordable, of good quality and available without discrimination.

The Bill provides for Advance Directives. No person who has recorded an Advance Directive to state that he/she should not be admitted to a facility without his consent, can be so admitted.

The government is required to provide half way homes, community caring centres and other shelters for mentally ill people. The Bill provides right to confidentiality and protection from cruel, in-human and degrading treatment, right to live in a community and legal aid.

(*TH, 14.06.13*)

'Control' Redefined

The Finance and Commerce Ministries have decided to accept the definition of 'control' in the Companies Bill as cleared by the Lok Sabha for the purpose of regulation of foreign investment also. The new definition would take effect only prospectively.

This would have implications for corporate M&A like the recent Jet-Etihad deal, which are yet to get government approval. Since the earlier definition laid emphasis on 'indirect control' and hence was broader in nature; the new definition will streamline the control in the company regarding ownership and will check violation by foreign partners in an Indian controlled company as per FDI rules.

(*FE, 24.05.13*)

New Realty Laws & Regulator

The Cabinet has approved the Real Estate (Regulation and Development) Bill, 2013 having a provision for setting up a realty regulator. The Bill provides a uniform regulatory environment to protect consumer interest, helps speedy adjudication of disputes and ensures orderly growth of the real estate sector. The Bill also provides for standardisation in sector carpet area, checking money trail and curbing laundering, professionalism and promoting planned development.

All builders with project size of 1000 sq meters and above are mandated to register their projects with state regulators. The Bill punishes misleading advertisements by builders and mandates the property brokers to obtain licence to conduct business. No builder will be able to sell property unless all necessary clearances are obtained.

(*BS, 07.06.13 & 04.06.13 & IE, 04.06.13*)

Bill to Set up BRAI

The Biotechnology Regulatory Authority of India (BRAI) Bill, 2013 for setting up BRAI and regulating the research, transport, import, manufacture and the use of organisms and products of modern bio-technology has been introduced in the Lok Sabha.

An Inter-Ministerial Governing Board to oversee the performance of the proposed BRAI and a Biotech Advisory Council to render strategic advice to the authority on matters relating to developments in biotechnology and their implications in India; have been planned.

BRAI would be the nodal agency to ensure comprehensive safety assessment of organisms and biotech products, will regulate the trials preceding the clinical trials in the health sector. (*BL, 22.04.13*)

India Should Not Delay Enacting a Privacy Act

It is time the government stopped twiddling its thumbs and took action

By modern standards of civility governments snooping on citizens is considered abhorrent behaviour. The admission by the US government that it has been collecting billions of pieces of information world-wide, especially personal data and emails, has thus been greeted by shock and anger. Indian citizens, too, have been subjected to this sweep, carried out under the Foreign Intelligence Surveillance Act (FISA).

It is time the government of India stopped twiddling its thumbs and took strong measures such as enacting a Privacy Act to protect the rights of citizens.

A report by *The Guardian* suggests that 6.3 billion reports were collected from India. The investigation followed reports that the US has been monitoring communications between US and foreign nationals over the Internet for years under a project called "prism". *The Guardian* said it has acquired classified documents about a data-mining tool called "boundless informant" that was used by the US National Security Agency that details and even maps by country the voluminous amount of information it collects from computer and telephone networks.

In April, the Indian government began rolling out a central monitoring system (CMS), which will enable it to monitor all phones and Internet communications in the country. Human Rights Watch has described CMS as "chilling, given its reckless and irresponsible use of the sedition and Internet laws".

Cybersecurity experts caution that while US and European Union citizens have recourse to law under their own domestic privacy policies, India has no such safeguard. The obvious agency to take a lead in the design, framing and enactment of such a law is the Union government. It is however, difficult to expect the government to take any initiative in the matter as, like any government, it would want to have the capabilities to intercept private communication of citizens. In April 2011, the government in a media release admitted that provisions for authorisation of interception are contained in section 5(2) of the Indian Telegraph Act, 1885, read with Rule 419 (A) of the Indian Telegraph Rules, 1951, as well as in section 69 of the Information Technology Act, 2000, read with the Information Technology (Directions for Interception or Monitoring or Decryption of Information) Rules, 2009.

Mint

The release also pointed out that the Supreme Court, in its order of 18 December 1996, had upheld the constitutional validity of interceptions and monitoring under section 5(2) of the Indian Telegraph Act, but added that telephone tapping would infringe the Right to Life and Right to Freedom of Speech and Expression enshrined in articles 21 and 19(1)(a), respectively, of the Constitution of India, unless permitted under the procedure established by law. However, these guidelines are implemented more by way of an exception rather than as a rule.

The trouble here is that while the law is clear, it has multiple exceptions built into it that allow the government to do as it pleases. The safeguards thought of by the judiciary are not sufficient to protect the privacy of citizens. It is too much to hope that the government will adhere to privacy norms on its own.

Three things need to happen in case India is ever to have a reasonable chance at a decent privacy law. One, citizen awareness and activism have to assume a much higher level than what prevails now. Two, public representatives, legislators, especially in Parliament, have to realise that privacy is a right that is at par with other rights and should not be trampled at will.

Finally, at an appropriate juncture, the higher judiciary should take a look at the issue carefully once again. Continuous judicial scrutiny of the government is, for now, the only viable option to check abuses of privacy.

* *Abridged from a news item that appeared in the* Mint *on June 11, 2013*

Health Cover becomes Costlier

Regulators have given green signal to the four state-owned non-life insurance provider companies in India to raise rates for individual mediclaim policies. These four PSUs control 70 percent market share between them. The decision taken by Insurance Regulatory and Development Authority (IRDA) would allow insurance companies to charge 30 to 40 percent higher than the existing rates.

According to Insurance companies, it was very necessary for them to increase the rates as the hospital charges have shown upward swing in the past few years. The health segment contributes up to 25 to 28 percent of the total portfolio for PSU general insurance companies and given the fact that claim ratio in health segment is quite high; it is inevitable to revise the existing rates.

(ToI, 20.06.13)

No Relief to Merck

US-based pharmaceutical company Merck Sharp & Dohme (MSD) has been denied of any sort of relief in a case in which it has filed petition in court to stop Indian drug manufacturer Glenmark Pharma from manufacturing and marketing anti-diabetes drugs Zita and Zita-Met.

The decision follows the ruling of the Supreme Court which went against the Swiss pharma firm Novartis related to its anti-leukemia drug Glivec. However, according to MSD, Glenmark pharma has violated the patent rule over its anti-diabetes medicines by producing above mentioned drugs.

MSD has shown its dissatisfaction over the decision made by the court and is contemplating over other option to defend its position. Glenmark Pharma on the other hand has lauded the decision being made by court.

(ET, 06.04.13)

Take off this Cap

The government is mulling over the idea of capping the price of all the drugs which are out price control when they are launched. The basic theory behind contemplating over such concept is that pharmaceutical companies in India keep the price of medicines too high at the time of launch.

If everything goes well, the government would be responsible to determine the production cost occurred during production of any drug and then would allow pharma firms to sell it at reasonable profit margin.

The whole idea of reasonable profit margin might end up creating ambiguity in the pharmaceutical sector due to paucity of any definite parameter to decide upon such margins. This will also affect the confidence of Indian as well as foreign companies from making any further investment in the sector.

(BS, 05.04.13)

Whistleblower Scheme

The Drug Controller in India is planning to come up with new set of measures in order to strengthen the existing rules to monitor the pharmaceutical firms.

The plan also includes empowering the whistle blower scheme which aims at encouraging general public to provide information regarding movement of spurious drugs in various parts of the country. The development takes place amid US Food and Drug Administration keeping closer eyes on the Indian Pharmaceutical Sector.

Subsequently, plan is also to establish 20 mini drug testing labs at port offices of Central Drug Standard Control Organisation (CDSCO) to ascertain the quality of imported drugs. 20 mobile drug testing vans would also be added to its kitty to check the quality of drugs present in the market. *(IE, 16.06.13)*

Compulsory Licensing Debate

Indian drug makers have urged the government to retain the option of compulsory licensing of a patented drug even as it considers a policy that will allow it to negotiate with drug companies on prices of patented drugs.

The government is in the process of gathering feedback from stakeholders on a policy draft for determining prices of patented drugs in the country. Indian Pharma Alliance (IPA) and Indian Drug Manufacturers' Association (IDMA), bodies representing the domestic pharma industry, have appealed to the department of pharmaceuticals that the proposed policy shouldn't undermine grant of compulsory licences.

The government can ask a local manufacturer to supply a patented drug at a lower cost than the price of the innovator company three years after the grant of a patent if it finds that reasonable requirements of public have not been satisfied, the patented drug is not available at a reasonable price or the patent granted is not being commercially exploited fully. *(ET, 08.05.13)*

Comply with EU Standards

The government has issued new guidelines which require Indian companies to comply with the Good Manufacturing Practice (GMP) standards of the European Union. The directive came in existence to ensure that the pharma exports to the 27-country region should continue unrestricted.

The directive will become effective on July 02, 2013 and prescribes standards for the entire supply chain i.e. from manufacturing to entire supply chain. The CDSCO has already issued detailed guidelines.

Now, a competent authority nominated by the government will certify that the API has been manufactured in accordance with the EU code and the facility where the API is manufactured is subject to the GMP standards equivalent to those in the EU countries, the statement said.

(ET, 24.05.13)

Big Pharma's Uncertain Future in India

Sushmi Dey

India's drive towards compulsory licensing, increasing patent challenges and denial of patent protection to anti-cancer drug Glivec have not gone down well with multinational drug makers who are grumbling that India has become a difficult market for them to operate, bring newer drugs and make investments in research. Their contention is patents are inadequately protected in India, which not just discourages research and development but also makes it a low-priority market for innovator companies.

www.bdlive.co.za

The increasing number of conflicts in the intellectual property space has led to some multinationals warning India that they may divert investments to other markets or at least start acting "cautious" in their approach. Novartis has repeatedly said that if intellectual property is not adequately protected in India then it will be "cautious" while making investments in innovation here. Merck has also indicated that patent protection is essential for attracting investments from companies in research and development.

Making a Case for Patent

Kewal Handa, Former Managing Director of Pfizer India and currently promoted Director of Salus Lifecare, says the apex court's judgement against Novartis and various patent challenges against Roche, Bayer and other multinationals could be a huge setback to the innovation and research ecosystem of India.

However, market analysts opine that all multinationals may not be as much impacted or discouraged by the latest moves. According to Nitin Agarwal of IDFC Securities, companies such as GlaxoSmithKline, Pfizer and Sanofi are seen to be less impacted as they already have a presence in India and have established their products. They have also made substantial gains from their patented products here.

Industry estimates show that multinationals have established their key brands over the years across therapies. Not all of these products are patented. In fact, the share of patented products is not more than two percent of the total market, including those pushed by them through their own retail and access programmes. Foreign players such as Abbott, GlaxoSmithKline, Novartis and Pfizer account for five of the top-10 brands in the Indian market.

Change of Plan

However, companies such as Roche and Bristol-Myers Squibb, which have just started making a foray into this market and are banking on patent protection for growth, may have to look around and adopt a new strategy. India is a country with a population of over 1.2 billion and a pharmaceutical market worth ₹70,000 crore which is growing at a pace of 12-14 percent per annum. Analysts suggest the Indian pharmaceutical market could touch US$29bn in annual sales by 2016.

Besides, the market for oncology, diabetes, cardio-vascular and anti-retroviral drugs, which are the most preferred therapeutic areas of multinationals, are growing significantly here. Some also argue that the issue of patent protection is unlikely to impact investments in India because patented drugs being sold by foreign firms in India are mostly imported.

Multinationals are worried about the country's patent regime, but India is too big a market to be ignored

If a company is successful in securing a patent in India, the returns are high with almost the entire market available to the patent holder. The profitability from such drugs also far outweighs the risk involved in litigation.

Many believe that after the recent hue and cry internationally, following the recent developments on Glivec, invocation of compulsory licence on Nexavar and more recently Merck's allegation against Glenmark of patent infringement of Januvia, prices of medicines in India are being seen as reference pricing by many other nations.

Even companies like Novartis have not completely turned away from the India market. Novartis has maintained that it will continue to file for patents and launch new products in India. "Products are launched in any country depending on market profile including unmet medical need. We would continue to consider these factors when launching products, including patented products, in India," Novartis India Vice-chairman and Managing Director Ranjit Shahani says.

– *Abridged from an article that appeared in the* Business Standard*, on April 16, 2013*

Optimistic about Economy

The Chief Economic Advisor Raghuram G. Rajan said that despite global uncertainty he is optimistic that the Indian economy will grow by over six percent in the current fiscal.

Even though US labour numbers have come in very weak compared to expectations, the tensions in the Korean peninsula are creating problems, Europe has the Cyprus issues; Rajan said he still stands by the 6.1-6.7 percent economic projections for the Indian economy.

Rajan was speaking to reporters at the two-day 'IM-PACT 2013' conference, organised by the Indian Institute of Management alumni in Singapore. *(BL, 07.04.13)*

Govt. up for Financial Reforms

Allaying speculations of an early election, Finance Minister P Chidambaram said that the government shall move ahead with key financial reforms and expedite stalled projects.

The Minister said that the government was moving fast with reforms, such as extending the rollout of direct benefit transfers to 78 more districts, transfer of LPG subsidies and amendment to the Income Tax Act with regard to retrospective taxation that will be taken up once the dispute with Vodafone is resolved and comments are discussed in the cabinet.

The government is also going to take a relook at sectoral caps to increase FDI. 31 stalled projects in oil and gas sector have been planned to get a push. *(FE, 07.04.13)*

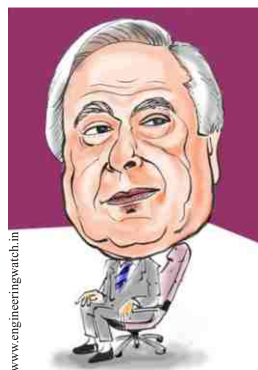
India's Growth Story Credible

The rating agencies should also take into account the many positive facets of the Indian economy while rating it. Such is the belief of C. Rangarajan, Chairman, Prime Minister's Economic Advisory Council.

Delivering the keynote address at the two-day Business Line Investment Opportunities Fair, he said India's expected growth rate of 6.4 percent in 2013 was quite high considering that among the BRICS countries, only China might grow at a higher rate at 8 percent.

He also said that while the current account deficit at 5 percent of GDP is high, fiscal consolidation is happening. He added that the government is forging ahead with its reforms agenda, citing the example of the opening up of the retail sector to FDI. *(BL, 03.05.13)*

EDUCATION SECTOR



Higher Education Super Regulator Unlikely

The Human Resource Development (HRD) Ministry is set to scrap the plan to establish an autonomous “super regulator” for higher education, championed by Kapil Sibal when he was HRD minister.

There is not a lot of enthusiasm in the Ministry now pursue the plan for the National Commission for Higher Education and Research (NCHER) as per a couple of government officials having knowledge of the same. NCHER was meant to be an overarching body, subsuming existing regulators like University Grants Commission (UGC), the All India Council for Technical Education (AICTE) and National Council of Teacher Education.

It is being believed now that there is no point scrapping these functioning institutions. Earlier on, the state governments of Bihar, Kerela, Punjab, Tamil Nadu and West Bengal had opposed the setting of the national overarching regulator for higher education.

(BL, 22.05.13)

Public-Private Alliances

The Planning Commission Deputy Chairman, Montek Singh Ahluwalia said that a target of eight percent average annual growth for the 12th Plan can be achieved only if the private sector contributes half of a trillion dollars required for infrastructure funding during the period.

He said private-sector participation in infrastructure PPP projects had grown substantially, from 10 percent of the required investment in the 10th Plan to 37 percent during the 11th Plan.

Ahluwalia urged the private sector to share and absorb the risks that are normally associated with model concession agreements under the PPP model and expressed regret that very little thinking had been done by the private sector on such agreements. *(BS, 30.04.13)*

FDI Reforms in the Offing

Prime Minister Manmohan Singh announced that more FDI reforms are on the anvil, following those in retail and aviation. He promised reforms in the financial sector also. A Ministry Panel has submitted a report suggesting the creation of a unified regulator instead of Sebi, PFRDA, Irda and FMC, which could eventually also merge RBI with it.

He said the reforms would help the economy finance the current account deficit (CAD), which is expected to decline only modestly initially in 2013-14. “We financed a CAD of over US$90bn in 2012-13 without a loss in (forex) reserves. We will take all steps to ensure inflows remain strong for the next two years. *(BS, 04.04.13)*

Development vs. Environment

Making it clear that project approvals shall be granted only after a fair and transparent assessment, Environment Minister Jayanthi Natarajan said that development cannot take place at the cost of the environment.

The Minister made an impassioned plea to move away from the predominant discourse focused on “environment versus development”. She emphasised that there was an unnecessary and irrelevant debate about development versus environment and that there was no 'versus' between the two.

There is no development without a consideration of the environment and a country cannot develop until it grows sustainably. *(ET, 06.06.13)*

Alleged Sugar Cartel Probed

The CCI has ordered probe into alleged cartelisation in the sugar industry for quoting prices in the tenders for supply of ethanol to oil marketing companies. The probe has been initiated against three trade associations, three oil marketing companies and 17 sugar mills.

They include the Indian Sugar Mills Association, the Ethanol Manufacturers Association of India, the National Federation of Cooperative Sugar Factories, Indian Oil Corporation, Hindustan Petroleum Corporation, Bharat Petroleum Corporation and Bajaj Hindusthan.

The Commission has found *prima facie* evidence of sugar mills collectively deciding to “fix price of ethanol for the supply to the oil marketing companies."

(TH, 06.06.13)

CCI Eases Norms for M&As

The Competition Commission (CCI) of India has eased combination regulations.

No notice is required to be filed for acquisition of shares or voting rights of companies, if the acquisition is less than five percent of the shares or voting rights in a financial year, where the acquirer already holds more than 25 percent but less than 50 percent of the shares or voting rights.

No notice is required to be filed for mergers/amalgamations involving two enterprises where one of the enterprises has more than 50 percent shares or voting rights of the other enterprise.

The requirement of giving notice is dispensed for merger or amalgamation of enterprises in which more than 50 percent shares or voting rights in each of such enterprises are held by enterprise(s) within the same group.

(ToI, 06.04.13)

Tyres are not Cartelised

Competition Appellate Tribunal (COMPAT) dismissed an appeal against a CCI order that cleared leading tyre manufacturers of charges of forming a cartel.

Dismissing the petition of All-India Tyre Dealer Federation, the tribunal said the plea was “non-maintainable” as CCI had not passed the order under certain sections of the Competition Act that allow an appellant to approach it against any CCI decision.

“Since in the present case, no contravention of either Sections 3 or 4 was found by the Commission after inquiry, the order in question cannot be made under Section 27 of the Act,” CCI had said in an order.

(FE, 29.04.13)

Cement Firms to Pay Penalty

COMPAT lifted a stay on part of the penalty to be paid by at least 11 cement makers held guilty of acting as a cartel by CCI. The tribunal directed the companies to pay 690 crore out of the 6,300 crore that they had been collectively fined within a month.

Among the companies, the worst-hit were ACC Ltd, Ambuja Cements Ltd, UltraTech Cement Ltd and Jaiprakash Associates Ltd, which were fined in excess of ₹1,000 crore each.

The companies in question also include Grasim Cements Ltd (now merged with UltraTech), JK Cement Ltd, India Cements Ltd, Madras Cement Ltd, Century Cement, Binani Cement Ltd and Lafarge India.

(Mint, 18.05.13)

Explosives Cartel Affirmed

COMPAT has reduced the penalty to 10 percent of total fine (₹51.62 crore) imposed by the regulator CCI on nine explosive manufacturers. In an order on April 14, CCI had imposed a fine of ₹28.94 crore on Gulf Oil Corporation, ₹11.34 on Solar Industries and ₹11.34 on Indian Explosives.

The tribunal said there was "application of the concerted mind" between the explosive manufacturers for quoting the rates to Coal India and had "nipped the bidding process in bud". "We would choose to order reduction of the penalty to the extent of total of 10 percent penalty imposed by the CCI...," the tribunal said.

(FE, 26.04.13)

SC: No Fine on Gulf Oil Corp

In a setback to the country's largest explosives and detonators manufacturer, Gulf Oil Corporation, the Supreme Court refused to stay the Competition Appellate Tribunal (CAT) order that upheld the penalty imposed on it, and eight others, following a complaint of cartelisation against them by Coal India.

The bench headed by Justice Anil R Dave, while issuing notice to CCI, refused to accept GOC senior counsel Ramji Srinivasan's argument that the firm should be given “liberty to secure the amount by way of bank guarantee before the registrar of this court” instead of depositing the money.

(FE, 13.05.13)

Clarity on Jet-Etihad Deal

CCI is examining the over ₹2,000-crore deal between leading carrier Jet Airways and Abu Dhabi-based Etihad Airways. The watchdog, whose job is to ensure a level playing field for all players in any sector, will see if this deal will mean Etihad getting substantive control in Jet and, if so, its impact on other airlines.

CCI is also likely to examine the proposed AirAsia India joint venture between the Malaysian budget carrier and Tata Sons.

Sources opined that if the proposed new airline gets a level playing field with all other carriers, like in terms of a common waiting period for flying abroad, then there will not be an issue.

(ToI, 10.05.13)

Manjul Cartoons

India's Great Gatsby Curve

Vikram S Mehta*

As income inequality grows, social mobility is constrained. Could this partly explain the IPL spot-fixing scandal?

F. Scott Fitzgerald's classic American novel, The Great Gatsby, triggers a complex of thoughts. But the one that crossed my mind as I recently watched the movie was the similarity between the shady origins of Jay Gatsby's enormous wealth and the nature and pattern of monetary accumulation in India in recent years. It also struck me that the dreams, and then despair, of the simple and not-so-wealthy garage owner in the movie provided a part explanation for the still-unravelling IPL spot-fixing scandal.

Over the past decade, and except in 2009 and the last two years, the Indian economy has averaged a growth rate of around 8 percent. This was a boom time for many companies, and a handful of politicians, bureaucrats and relatively unknown businessmen amassed an enormous amount of wealth. Three factors drove this success: access to capital, political patronage and a favourable international climate.

The spot-fixing shenanigans of the second-tier IPL cricketers can also be interpreted against this Gatsby-esque economic phenomena. Most IPL cricketers come from middle class, salaried families. They have had dreams to break into the elite echelons of cricket, but they know that given competition and, alas, politics, these dreams will most likely not be realised. The IPL has been a godsend for them. The problem today is that these prospects have dimmed. This is because whilst the IPL is a massive money spinner, the earnings are not evenly distributed. The bulk of these earnings go into the hands of the cricketing establishment, the owners, and the "star" players. As a result, the gap between the highest paid and the rest is wide, and continues to widen.

There is a thin line between dreams and despair. The garage owner in The Great Gatsby had set his heart on acquiring a coupe owned by Tom Buchanan, a rich client. Buchanan deliberately kindled this hope. When it became clear, however, that his dreams would never be fulfilled, he took a gun to Gatsby and then to his own head. In the case of IPL cricketers, the line was between the bending of the law and the breaking of it. As realisation dawned that the avenues for income growth were getting progressively choked, some crossed that line.

Looking ahead, I am hopeful that the Gatsby curve will face a discontinuity in India. This hope rests on today's changed economic and social context. Growth has slowed, the pull of the international market has weakened, the cost of capital remains high and our "gotcha media" has brought to public notice the spread and depth of corruption. Many of the companies that hit the good times are now in deep financial difficulties.

This does not mean corruption has ended, but in the face of a vigilante press, an activist judiciary and an emboldened CBI, CVC and CAG, it does mean that people have to be particularly self-assured or foolish to want to extract rent in the manner they extracted it in the past.

My hope is that other than the scams that have already been completed and have yet to be uncovered, there are no fresh ones currently in the making.

A naive hope, no doubt, but one has to merely read the introductory chapter of Daron Acemoglu and James Robinson's book, Why Nations Fail: The Origins of Power, Prosperity and Poverty, to know the consequences if this hope is totally off-base.

The central message of the book is that nations that have had "inclusive" institutions that allow everyone to participate in the governance of the country, and that ensure fair access to economic opportunity, have succeeded.

India has, in recent years, exhibited the traits of an "extractive" nation. The question is whether the cathartic revelations of corruption, combined with the changed fortunes of many in the elite, will shift the pendulum towards inclusiveness.

---

* *Chairman of Brookings India and Senior Fellow, Brookings Institution, US. Abridged from an article appeared in the* Indian Express, *on June 03, 2013*

Still in the Game

Sunanda K Datta-Ray*

PV Narasimha Rao told me his only purpose in liberalising the economy was to obtain foreign funds to develop the infrastructure and free domestic revenue for social welfare. Speaking of schools and hospitals, he said "there will be blood on the streets otherwise", which I quoted in Singapore's Straits Times where I then worked. Others interpreted his reforms differently. Indian tycoons whom the media dubbed the Bombay Club grumbled about an influx of smart competitors from abroad, while foreign businessmen, eyeing a potentially rich market of 300 million (a guesstimate) middle class consumers, licked their chops in anticipation.

Two decades on, India is still an attractive destination for foreign funds. The New Asia shows why

They are still doing so more than 20 years later. Hence The New Asia, subtitled Business Strategies for the Economic Region That Is Shaking Up the World, by David James and Rajeev Merchant, which Praeger will publish.

Instead of trotting out the old claim about India and China together accounting for the bulk of the world's gross domestic product until the Industrial Revolution gave Europe an unfair advantage, this well-researched manual says India alone "developed the largest economy of the world, controlling between one-third and one-fourth of the world's wealth" during the 1,500 years after 230 BC.

Another nugget gives the lie to those who accuse Indian politicians of monopolising nepotism. Kanti Desai and Sanjay Gandhi would have whooped to read that when Wen Jiabao was China's prime minister, his son headed a large state-owned satellite company. Similarly, President Hu Jintao's son managed a state-controlled corporation "that held a monopoly on security scanners used in China's airports, shipping ports, and subway stations". Confucius might have called it family values with Chinese characteristics.

India is also Asia's seventh most corrupt country and ranks at the bottom - just above Cambodia and the Philippines - in business efficiency. In any case, India is just one of 16 countries James and Merchant examine in the context of what they call the "Five Factors" that accelerate and obstruct growth in the true tradition of Ganesh whom they invoke as emblematic of India.

These are listed as: Resources and Geography; Governments; Technology, Innovation and Entrepreneurship; Competitive Business Practices; and Cultures and Social Institutions. This thematic pan-Asian approach enables the authors to argue that the Tata Group and South Korea's chaebol conglomerates have organisational structures similar to the cartels or groupings of companies called keiretsu that are replacing Japan's family-controlled zaibatsu.

Time was when European travellers to the Orient were warned of the perils of offering a ham sandwich to a Muslim or assuming that men holding hands were homosexuals. While cultural miscommunication continues, it's just as confusing when traditional stereotypes disappear.

A quibble: I thought it's in England that superstitious folk demand a penny if they give a knife or scissors so that the gift becomes a sale and doesn't cut the bonds of friendship. It's called an Asian foible in The New Asia.

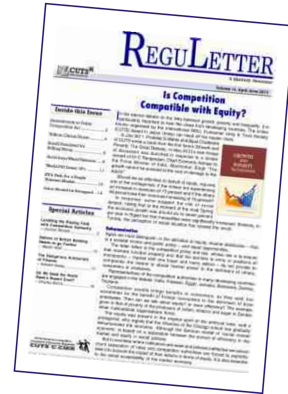
James and Merchant compare nations and national characteristics without fatuous references to "Chindia" and with greater subtlety than Lee Kuan Yew. Describing Vinoba Bhave's movement, Lee claimed the Chinese wouldn't have begged for land. They would have killed the landlords and seized it. The same distinction is drawn here with finesse. One paragraph in the Religions and Philosophies section says East Asians are successful businessmen because Confucianism teaches pragmatism. The next identifies Hinduism with social stratification, the family and "utmost respect for elders". In short, Indians cling to the *status quo*.

Worst of all, despite the US$90bn Delhi-Mumbai Industrial Corridor, which gets quite a bit of attention in these pages, the infrastructure is as bad as ever. And schools and hospitals are just as scarce. Books like The New Asia should facilitate the flow of investment dollars that alone can realise Narasimha Rao's dream.

---

* *Leading Journalist. The article appeared in the* Business Standard, *on June 14, 2013*

ReguLetter



The April-June 2013 issue of ReguLetter encapsulates 'Is Competition Compatible with Equity' in its cover story. Competition usually brings benefits to consumers, as they said, but sometimes for the benefit of foreign consumers to the detriment of local employees. Then can we talk about equity? or even efficiency?

A special feature by Michael Martina states that foreign companies often feel antimonopoly considerations come second to a trade agenda.

There is another special article by Martin Wolf which opines that an industry that has taken the public for a ride must be made to change its ways.

This newsletter can be accessed at: www.cuts-ccier.org/reguletter.htm

Research Reports

Rethinking Business Responsibility in India: *A Review of Pharmaceutical & Private Healthcare Sectors*

This Report contains an overview of the theoretical foundations of the interface between business responsibility and corporate conduct from an international context linking it with the Indian perspective. It analyses the policy and institutional framework in the two sectors in India and identifies implications for responsible business and contains a description of the research problem and methodology used for undertaking the study. A detailed analysis of the data collected from the four states is provided. It highlights key emerging conclusions of the study and the sixth presents some thoughts on the way forward.

This Report can be viewed at: www.cuts-ccier.org/BRCC/pdf/Rethinking_Business_Responsibility_in_India.pdf

Unfair Trade Practices and Institutional Challenges in India: *An Analysis*

The term Unfair Trade Practice (UTP) broadly refers to any fraudulent, deceptive or dishonest trade practice or business misrepresentation of the products or services that are being sold which is prohibited by a statute or has been recognised as actionable under law by a judgement of the court. However, the term does not have a universal standard definition. This Report tries to analyse and understand the concept of UTPs in India by comparing the concept in other countries also. The paper highlights various institutional challenges and finally suggests efficient approaches to tackle the same.

This Report can be viewed at: www.cuts-ccier.org/pdf/Unfair_Trade_Practices_and_Institutional_Challenges_in_India-An_Analysis.pdf

Briefing Paper

Business Regulatory Framework: *Towards Optimal Business Regulatory Governance*

The Planning Commission of India has developed the Twelfth Five Year Plan (2012-17) which has been approved by the National Development Council in December 2012. It had formed a Steering Committee which divided its work into cross cutting as well as sectoral Working Groups. This Briefing Paper discusses The Working Group on Business Regulatory Framework (WG BRF) A cross cutting Working Group in which CUTS served as a Knowledge Partner. It summarises the report framed by the Working Group in the year 2011.

This Briefing Paper can be viewed at: www.cuts-ccier.org/pdf/Business_Regulatory_Framework-Towards_Optimal_Business_Regulatory_Governance.pdf

We want to hear from you...

Please e-mail your comments and suggestions to **c-cier@cuts.org**

We put a lot of time and effort in taking out this newsletter and it would mean a lot to us if we could know how far this effort is paying off in terms of utility to the readers. Please take a few seconds and suggest ways for improvement on:

- Content
- Number of pages devoted to news stories
- Usefulness as an information base
- Readability (colour, illustrations & layout)

SOURCES

BL: The Hindu Business Line, **BS:** Business Standard, **BT:** Business Today, **ET:** The Economic Times, **FE:** The Financial Express, **HT:** Hindustan Times, **IE:** Indian Express, **TH:** The Hindu, **ToI:** Times of India

The news/stories in this Newsletter are compressed from several newspapers. The sources given are to be used as a reference for further information and do not indicate the literal transcript of a particular news/story.

Complete reproduction without alteration of the content, partial or as a whole, is permitted for non-commercial, personal and academic purposes without a prior permission provided such reproduction includes full citation of the article, an acknowledgement of the copyright and link to the article on the website.