Opinion

FRIDAY, JANUARY 25, 2019

DON'T RELY ON CENTRAL BANKS

Christine Lagarde, IMF chief

It would be very nice if the economies at large didn't have to rely on central banks yet again in order to resist the next shock. Policymakers have to really take the right course of action... when it comes to completing the reforms

Air India subsidies played big role in grounding Jet

Had taxpayers not spent ₹32,809 crore to fund Air India and it had shut operations, Jet would look quite different

IN HINDSIGHT, IT would appear the beleaguered Jet Airways got it wrong by opting to run a full-service airline in a country that just about made it to lower-middle-income status a few years ago, but the jury is out on that one. Certainly, the airline market is dominated by IndiGo's low-cost model, but Tata Motors' low-cost Nano flopped and Maruti Suzuki's semi-premium models like the Baleno are selling better than the economy ones like the Alto. What is quite unambiguous, though, is the role played by the government—including the high taxes on aviation fuel in various states—and the refusal of the country's competition watchdog, the Competition Commission of India (CCI), to do anything about this even though it falls under its ambit in the broad sense of the term.

The loss-making Air India, as Bloomberg Opinon columnist David Fickling pointed out in this newspaper on Thursday, is a full-service carrier—like Jet Airways—but its ticket prices resemble those of a budget airline. Over the past few years, data from the Directorate General of Civil Aviation show that Jet's passenger yields are significantly higher than IndiGo's but Air India's yields aren't very different. In 2017, for instance, Jet's yields were ₹4.4 per revenue passenger kilometre (RPK) versus ₹3.7 for IndiGo (18.9% higher) and ₹3.9 for Air India (just 5.4% higher than IndiGo); in 2014, in fact, while Jet's yield was ₹4.9 versus IndiGo's ₹4.5, that for Air India was even lower at ₹4.3 (*goo.gl/M87pk7*).

No two airlines, it is true, are the same, so comparisons are difficult but, without a massive cash infusion by the government—₹32,809 crore so far since FY10—the airline would have shut down a long time ago; while data for FY18 is not out, between FY09 and FY17, the airline made losses of ₹47,629 crore which brought down its net worth to a negative ₹16,802 crore in March 2017. Indeed, the airline's ability to raise money, and the banks not taking it to the insolvency courts, is based on the implicit—and explicit—guarantee it enjoys as a PSU. Had the free cash infusion, and the government guarantee, not been available, Air India would have either shut down or withdrawn from various routes; and, most certainly, it could not have priced its tickets as low as it does; more so since its staff costs are at least 30% higher than those of rivals like IndiGo and other costs are 2.4 times as high. How much of an impact Air India's withdrawal of operations from many routes or even shutting down completely will have is not clear, but it is obvious that if 15% of the capacity average over 2014-18 is withdrawn from the market—and much more in the full-service part of the market—fares will rise significantly.

Despite the deleterious impact of the cash infusion on the competition being obvious, the government never consulted the competition watchdog on this; sadly, it didn't occur to CCI that it should have stepped in to make its point about the impact, and quite publicly at that. Nor is this the first time CCI has been caught napping on the impact of government subsidies, whether implicit or explicit. So, while the Vajpayee government came out with a policy to allow private sector firms to set up petrol pumps, high subsidies on both petrol and diesel ensured that both Reliance Industries and Essar Oil had to shut down their retail operations eventually since consumers found it cheaper to buy fuels from the PSU oil companies IOC, HPCL and BPCL. A similar scheme to bring in private sector players into the cooking gas market also ended in a fiasco for the same reason. So, while condemning Naresh Goyal for not running his airline well, or Vijay Mallya before that, it is important to also keep in mind the government's role in this.

Showing poor judgement

Lowering the bar for reserved posts in judiciary is a bad idea

A SUPREME COURT bench headed by Chief Justice of India (CJI) Ranjan Gogoi has asked the Kerala High Court to consider lowering the qualifying score for SC/ST candidates for filling up judicial officer posts in trial courts in the state. The recommendation comes against the backdrop of the High Court fixing 35% as the qualifying score in the preliminary examination and 40% in the main examination, and netting just three reserved category candidates, none of whom was found eligible after interview. As a result, 14 reserved category posts lie vacant. Given the chronic shortage of judicial staff, the posts lying vacant is indeed a concern. But that pales in front of the fact that further lowering the bar for Scheduled Caste (SC)/ Scheduled Tribe (ST) candidates will affect judicial efficiency and the quality of justice delivery.

Indeed, the Supreme Court needs to pay heed to its own observation from 2016—a bench headed by then CJI Justice TS Thakur had refused to reverse an order of the Punjab and Haryana High Court against lowering the qualification marks for SC candidates in the Haryana judicial services examination saying, "For selecting a judge there has to be a minimum qualification....just because one is a Scheduled Caste, the same cannot be done away with". When just three SC candidates qualified for the *viva voce* in the recruitment for 119 civil judge vacancies in Haryana—against 22 reserved posts for SC candidates who had to score 45% to qualify—a petition seeking the lowering of the threshold for SC candidates was filed at the Punjab and Haryana High Court. The petition cited the apex court's ruling in the *Ram Bhagat Singh* matter of 1990, that if "a percentage is fixed for qualification which would normally be unattainable by the scheduled castes and scheduled tribes determined on an objective basis, it would not be possible to ensure equality of opportunity". Importantly, the *Ram Bhagat Singh* ruling had come in a scenario where 55% had been fixed as the qualifying threshold for all categories. The Punjab and Haryana High Court dismissed the petition saying, "In most of the recruitment process, there has been a fair representation from amongst different reserved categories and there have been occasions when open category posts also remained unfilled for want of suitable candidates....Needless to say that, in the matter of appointment to Judicial Services, efficiency and quality is non-negotiable". In other words, the High Court had ruled that posts lying vacant was far more preferable than diluting the standards and rigour required of the judiciary, and the Justice-Thakur bench had concurred. If aspirants who likely completed their legal education with the crutch of reservation need a lowering of qualification marks to make it to the posts that have been reserved for them, it portends a fall in the overall standards of the judiciary.

WastedLives

The govt must stop hiring manual scavengers and provide them alternative livelihoods

MANUAL SCAVENGING REMAINS a blot on India's governance, considering it was outlawed 25 years ago, and yet, since 2017, one manual scavenger has died every five days, as per data from the National Commission for Safai Karamcharis. Most of the times, standard safety practices weren't followed and the deceased had not been provided any safety gear. For a bare minimum income, in a practice that reinforces age-old caste beliefs, manual scavengers take on grave risk to life and limb—from toxic gases in sewer lines to infections like hepatitis, leptospirosis, respiratory disorders from manually removing excreta/waste. Ironically, precisely because manual scavenging has been long outlawed, states have resorted to simply under-reporting the population of manual scavengers in their respective jurisdictions—some have even claimed that they don't have a single manual scavenger. Despite such under-reporting, their numbers, as per a Union government task force, have grown fourfold since the last time such an exercise was conducted.

The definition of a "manual scavenger" as per the law doesn't recognise septic tank and sewer-line cleaners as manual scavengers. A large number of toilets, including many built under the Swachh Bharat Mission (SBM), in the absence of a sewerage system, rely on waste collection in small pits—this has led to hiring of manual scavengers for cleaning. Toilets build under SBM should be built on the twin pit model, where one pit is in use and the other is composting the collected human waste. Indeed, the government employs people for this routinely, the most prominent example of this being the Railways. While the Supreme Court has, on several occasions, directed the Centre and state governments to take steps towards the monitoring and implementation of the ban on manual scavenging, this hasn't been effective. Sensitisation, counselling and awareness campaigns can help, but what is really needed is the providing of suitable alternative jobs for manual scavengers, especially women.

FISCAL MARKSMANSHIP

AN ANALYSIS OF THE SOURCES OF ERRORS IN FISCAL FORECASTS OF THE CENTRE SHOWED THAT THE SOURCES ARE NOT DUE TO POTENTIAL BIASES, BUT RATHER DUE TO RANDOM FACTORS

Analysing budget forecasting errors

LEKHA S CHAKRABORTY

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DOES THE MINISTRY of finance produce biased budget forecasts in India? Does the electoral cycle predominantly determine the fiscal behaviour of the Centre? The answers to these questions can be unlocked only through a fiscal marksmanship analysis. Fiscal marksmanship is the analysis of the accuracy of budgetary forecasts and whether the sources of error in the forecasts are biased or random.

In the context of the European Union, the debate is whether in-house budgetary forecasts by the ministry of finance or an independent agency, like the Fiscal Council, can prepare the fiscal forecasts better. This debate has sprouted against the backdrop of fiscal rules which constrain fiscal deficits and public debt to threshold ratios.

Do fiscal rules help in ensuring prudential fiscal marksmanship is a question researchers are increasingly getting interested in. Fiscal marksmanship analysis is the technical prelude to fiscal governance in managing the deficit numbers with relation to the pre-determined threshold ratios. This analysis across countries reveals that deterioration in public deficits and fiscal forecasting errors have compelled countries to get into more stringent fiscal consolidation measures.

The forecast errors can happen if there is a potential bias in the revenue and expenditure projections. However, if the costs of fiscal forecasting errors are symmetric, meaning the positive errors in revenue are as bad as the negative errors in expenditure, the overall forecasts should present no potential bias in estimates. There is practical evidence to believe that the loss function of ministry of finance may not be symmetric. The potential bias in budgetary estimates could not be optimal. The political economy conundrums of errors in fiscal forecasting could be mixed.

Empirical studies often determine the fiscal forecasting errors (or only the forecasts) as a function of two factors: one, the deviation between actual and potential GDP which we refer to as "output gap" and, two, the electoral cycles or the fiscal institutional governance structure. However, these independent think tank analyses often lack the in-house insights of the ministry of finance in having reasons for significant deviations between budget estimates (BE), revised estimates (RE) and actual spending.

It is high time that the Economic Survey of India, a significant document that is tabled in Parliament a day prior to the budget presentation, should produce a chapter on fiscal marksmanship and explain the magnitude and sources of fiscal forecasting errors in revenue and expenditure, at aggregate and disaggregate levels. A paper by NIPFP (Chakraborty and Sinha) showed that the magnitude of fiscal forecasting errors is maximum in the case of capital budgets rather than revenue budgets. The magnitude of errors in capital expenditure was prominent. However, the analysis of partitioning the sources of errors in fiscal forecasts of the Centre showed that the sources are not due to the potential bias of the forecaster in the ministry of finance, but rather due to random factors.

This means that the errors in the fiscal forecasts of the government of India is beyond the control of the forecaster. Had the forecasting errors been due to potential biases in the estimates, improving the estimates could have been made possible through improving the forecasting methodologies or revising the assumptions in revenue and expenditure projections. The aberrations in the revenue realisations are due to random determinants. Having said that, it is also relevant to highlight that the relatively higher magnitude of errors in capital expenditure is due to the fact that fiscal marksmanship is often attained through downward adjustments in capital spending. Though this reality is known in close circles of the ministry of finance and in academia, the long-term adverse growth consequences of these adjustments in downsizing the capital spending is not holistically responded to, in policy circles. It is also due to the dominant narrative in fiscal policy circles that "fiscal discipline" (by adhering to fiscal rules) is growth-enhancing, when it is not so if the path towards fiscal consolidation is not through tax buoyancy but through public expenditure compression in capital formation.

> Volatility in intergovernmental fiscal transfers has had significant impact on the forecasts of public deficits by state governments

The story of fiscal marksmanship cannot be confined to the national budgets. Our analysis of the magnitude of deviations between budget estimates and the actual spending at subnational government levels in India—all states—showed that the magnitude of forecasting errors is alarming. The positive forecasting errors in revenue receipts for the period 2011-12 to 2015-16 is as high as 1.20% of GSDP for aggregate/all states. The analysis of sources of these fiscal forecasting errors, state-wise, revealed that it was not random determinants behind these aberrations in many states. This is a matter of concern.

Reducing fiscal forecasting errors is critical for budget credibility and medium-term fiscal policy framework at the state levels. The point to be noted here is that the deviations in revenue forecasts at state levels has happened not exclusively through aberrations in the own tax revenue forecasts/projections of the states, but also through the uncertainties in the flow of intergovernmental fiscal transfers from the Union government to state governments. The state-wise fiscal marksmanship analysis of revenue and expenditure is compelling to examine the fiscal forecasting errors at the state level.

The CAG (Comptroller and Auditor General of India) reports are the reliable sources to go to for the roots of analysing the fiscal marksmanship in India. When CAG reports reveal that the devolution of 42% of the divisible pool to the states recommended by the 14th Finance Commission was not fully transferred to the states—the devolution of net proceeds of ₹25,000 crore out of a divisible tax pool was not transferred to the states in the financial year 2015-16—the severity of reasons of lack of fiscal marksmanship is revealed before us. This volatility in the flow of intergovernmental fiscal transfers to the states to the magnitude of ₹25,000 crore has significant impact on the forecasts/projections of public deficits by state governments and, in turn, on their fiscal marksmanship.

India's Lehman genie out again

Even now, India needs hundreds of billions of dollars for roads, bridges and power plants. It will be hard to raise that money if ring-fenced investments go from AA one week to D the next

ANDY MUKHERJEE

Bloomberg

FIRST, IT WAS the IL&FS Group that ran out of money. Now that the bankrupt Indian infrastructure lender-operator has been sequestered from creditors, the country's securitisation industry is on borrowed time.

It all began on Tuesday with S&P Global's Indian affiliate, Crisil, downgrading Jharkhand Road Projects Implementation Co.'s annuity-backed bonds to D after it skipped interest and principal payments. It is a strategic default on an instrument rated AA just last week. The borrower had money. It reneged on the obligation because the IL&FS parent and 348 group companies have been allowed by the country's bankruptcy tribunal to block creditors while a government-appointed board sorts out the $12.8 billion debt load.

What makes Jharkhand's default disturbing is that investors believed its securitised debt would be unaffected by the parent's bankruptcy. These bonds were legally backed by annuity income from the Indian state of Jharkhand. That assurance was the basic premise on which they invested in the structured debt obligation in the first place.

Now this illusion has been shattered, let's look at the implications.

Page 38 of the debt prospectus from 2017 lists the order in which Jharkhand's project cash flows must be used, with payments for senior debt ranking behind taxes, construction costs, and operations and maintenance-related obligations. So, hopefully, the physical assets will continue to be maintained and a set of perfectly serviceable roads won't slip into what the World Bank once termed India's culture of "build, neglect, rebuild".

However, that is where the good news ends because the damage to India's shadow-banking industry is incalculable. Most gray market lenders don't finance roads and bridges, but advance money raised from deposit-taking banks and money-market mutual funds to small businesses and micro-finance borrowers, as well as against home and vehicle ownership. Their wholesale borrowing costs spiked in the aftermath of IL&FS defaults.

Since their assets are mostly doing just fine, and certainly a lot better than conventional banks' big-ticket advances to India Inc., the shadow financiers started to package small loans for sale to the likes of State Bank of India. The whole point of the exercise was to create pooled assets that would survive the originator's bankruptcy. Jharkhand's default has removed that comfort. Last quarter's record $3.7 billion monthly run rate of Indian securitisation deals is suddenly at risk.

> What makes Jharkhand's default disturbing is that investors believed its securitised debt would be unaffected by the parent's bankruptcy

When IL&FS started to blow up in September, I warned that this was India's mini-Lehman moment. A fairly swift rescue by the authorities managed to contain a full-blown crisis of confidence. But the Jharkhand default has put the genie of mistrust out of the bottle again. ICRA, the local affiliate of Moody's Investors Service, on Tuesday put the AA and AAA ratings of six Indian bond funds on rating watch because of their exposure to securities debt raised by Jharkhand and other IL&FS-linked special purpose vehicles.

An immediate order to IL&FS's new board to honour securitised debt is the need of the hour. Otherwise, India's funding markets could see a repeat of last autumn's freeze. Back then, the government blamed the central bank for not infusing enough liquidity into the system; now that New Delhi has swapped a difficult technocrat with a former bureaucrat as the Reserve Bank governor, whom will it blame for any fresh tremors?

The collapse of IL&FS has put a question mark on India's model of infrastructure financing. Was involving the private sector to break the constraint of inadequate tax resources a viable alternative? Or did it merely allow IL&FS's erstwhile management to get rich at the expense of everyone else by privatising profits, and socialising losses? Even now, India needs hundreds of billions of dollars for roads, bridges and power plants. It will be hard to raise that money if ring-fenced investments go from AA one week to D the next.

When IL&FS stopped paying its debt, rating firms were rightly blamed for being asleep at the switch. The Jharkhand default, however, can't be pinned on analytical incompetence. India's bankruptcy tribunal must understand that it is there to prevent contagion, not to manufacture one of its own.

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LETTERS TO THE EDITOR

A game-changer

Congress president Rahul Gandhi's decision to appoint his sister Priyanka Gandhi Vadra as the general secretary of the Modi-Yogi stronghold of east Uttar Pradesh could prove to be a game-changer. The unprecedented move not only marks her entry into formal politics but also makes her a member of the Congress Working Committee (CWC), the party's highest decision-making body. With just a few months left for the general elections, the Gandhi scion has a big chance to prove her mettle and make her presence count. The Congress has also done well to appoint Jyotiraditya Scindia as general secretary, western UP, and this ploy is certain to upset the BJP's calculations

— Ravi Chander, Bengaluru

It's huge for us

As shortage of experienced professionals with desired level of niche skills can potentially lead to a lop-sided work culture, uneven wage structure and staff management issues, proposals to ease citizenship norms can hardly be expected to offset the impact of restrictive immigration/visa policy norms towards foreign nationals. While consistency demands equal employment prospects to boost job growth and curb undue brain-drain, widening skill gap in advanced domains/technologies runs a risk of stagnating revenue growth, primarily on account of utilisation of resources at client-facing projects. Although the uncertainty can bring about public cheer for the incumbent regime and benefit start-ups to some extent, the turbulence in the international market can hamper the timeline/quality of deliverables and availability of cost-effective business solutions in the longer-run

— Girish Lalwani, Delhi

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ILLUSTRATION: ROHNIT PHORE

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Addressing regional imbalances in agriculture credit in India

Agriculture credit has, in the last few years, won the battle of 'growth'—the cake has grown bigger—but it still has to get the distribution aspect right

A DEFINING FEATURE OF agricultural credit is that it is an indirect (as opposed to direct) input into agriculture, i.e. credit enables the farmer to buy inputs like seeds, fertilisers, pesticides, insecticides, etc, which has a bearing on what happens in his field and, ultimately, on his income. This criticality of agriculture credit perhaps lends it a power that no other indirect input has ever commanded.

Many a time, experts and opinion-makers have sought to attribute a one-to-one correspondence between growth of agriculture credit and agricultural production. No doubt, growth in agriculture credit is essential for supporting production, but it would be erroneous to seek a perfect correlation between the two, as agriculture credit influences agricultural production through other direct inputs.

In the last decade, agriculture credit has registered a per-annum average growth of 16.5%. In terms of physical outreach, the three credit purveying agencies (commercial banks, cooperative banks and regional rural banks) have been able to add 699 lakh accounts between 2007-08 (440 lakh accounts) and 2017-18 (1,139 lakh accounts). The above aggregate numbers at the all-India level speak for themselves. However, the system needs to go up by a few notches in terms of equity aspects. The inclusiveness quotient in terms of regional distribution and connect with real sector variables can be further strengthened. For example, the five southern states together account for almost 43% of the amount disbursed and agriculture accounts. The next largest share in terms of amount is garnered by the northern region and is almost half of southern region (see table). The increased share for the southern region may be because of better infrastructure facilities, better outreach and credit delivery outlets. The skewed distribution of agriculture credit across regions is presented in the accompanying table and calls for redressal.

Economic textbook logic tells us that wherever the demand-side factors are conducive, resources (read agriculture credit) should flow towards those regions. For example, the share in credit of the eastern region is quite low compared to its share in the gross cropped area. Similar is the case with the central region. The distribution of real sector variables calls for a much better distribution of credit across regions (see table). What it indicates is the well-known reality that markets do not necessarily allocate resources optimally if left to themselves. The regional imbalance in agriculture credit has persisted for long despite the demand-side mapping reflecting a different picture. So, what needs to be done to make agriculture credit distribution more equitable?

Few suggestions

While policy stakeholders have been aware of the distortions, a more hands-on approach is required. There is a case for making concerted efforts to cover all farmers' households within the fold of agriculture credit across regions (except southern and northern regions where the number of agriculture accounts is more than the number of farmer households). The gap between farmer households and agriculture accounts is the highest in the central and eastern regions, at 166 lakh and 152 lakh, respectively.

Fixing priority sector lending (PSL) should become a more granular exercise based on regional realities—the uniform norm of 8% credit going to small (less than 2 hectares) and marginal (less than 1 hectare) farmers under the 18% overall target of agriculture credit under the current PSL guidelines needs to be revisited and targets fixed based on regional realities. Introducing differential weight to the credit disbursed in agriculture credit-starved regions could be considered. Small and marginal holdings constitute 95%, 82% and 86% of total operational holdings in the eastern region, north-eastern region and central region, respectively, and for these regions the said target should be of a higher order.

Digital technology has opened alternatives that can act as substitutes for brick-and-mortar branches, viz. business correspondents, business facilitators, mobile telephony technology, digital card technology, etc. Now, the policy challenge is to ensure that these interventions help leapfrog these hitherto credit-starved regions into the next league. The tendency of digital interventions gravitating towards the already well-endowed regions will accentuate the problem and runs the risk of becoming counterproductive. A similar focus should be in the case of farmers' collectives like farmer producer organisations and joint liability groups as these help reap economies of scale both on the output and input markets and become vehicles of purveying credit to small and marginal farmers.

Digitisation of land records, which is under way in most states, needs to be completed on a mission mode in the eastern and north-eastern regions, as this can provide the much-needed reform at the bank branch level for credit expansion at a click of a button. Digitisation of land records will pave way to bring vibrancy in developing a land lease market.

The government has embarked on an emphatic initiative to complete the identified irrigation projects in a time-bound manner providing irrigation facility to 80 lakh hectares. This shall increase the credit absorption capacity in the command areas of these projects. To hasten the credit flow in these areas, banking plans are required under an 'area development' approach. The impact of public infrastructure creation in rural areas, be it irrigation, connectivity, health, sanitation or education, on enhancing credit absorption capacity and expenditure pattern is a proven one. In the credit-starved regions, rural infrastructure creation needs to be dovetailed with the small area-based plans for various agriculture investments including devices for efficient use of water, electricity and solar power that require bank credit and get the banks on board for these plans.

Agriculture credit has, over the last few years, won the battle of 'growth'—the cake has grown bigger—but it still has to get the distribution aspect right. This is the immediate unfinished agenda of 'agriculture credit in India', which requires focused attention from all the stakeholders.

Share of agriculture credit & real sector indicators
(Region-wise)

(In %) Region	Agri. credit (2017-18)	Agri. accounts (2017-18)	Gross cropped area (GCA)	Rural/semi urban branches
Northern	22.02	12.71	20.11	16.62
North-east	0.88	1.37	2.83	3.16
Eastern	8.10	14.29	14.65	17.99
Central	14.43	17.63	27.26	21.51
Western	12.04	10.96	16.47	12.98
Southern	42.53	43.04	18.68	27.74
All-India	100	100	100	100

Source: Calculated based on data from NABARD, MOA and RBI

POWER TRADE

Beyond borders

KAMESWARA RAO

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New regulations for cross-border power trade a step towards the subcontinent's regional power market

POWER MINISTERS OF South Asian nations had a reason to cheer this new year. They got a step closer to founding the subcontinent's regional power market when India repealed old guidelines for cross-border power trade, in December. The framework replacing it is progressive and can unlock an entire new industry and trade arrangements.

The business of import/export of electricity across borders is not new, but traditionally had been a bilateral affair and considered as a case for development aid or an extension of foreign policy. From the other side of the border, India was seen as an insatiable market to sell into. These attitudes started to change as growth picked up across South Asia. New projects could not be built fast enough to meet the rising demand and, having overcome its power shortages, India found itself a net exporter of electricity for the first time.

The new framework for signing power contracts across borders is liberalised, where the public sector no longer has preferential position and commercial decisions to buy or sell are left to individual market participants. The policy is technology-agnostic and export projects can be based on commercial coal or renewable energy, and can be set up as stand-alone or integrated facilities (i.e. the generation plant with a transmission line to the border). Other South Asian nations can gain from a competitive Indian power market to save on operating costs and avoid having to sink scarce capital into long-gestation generation projects.

Energy cost is an important issue for developing countries. Imports of coal and petroleum products pose a serious threat to BoP and competitiveness. It is not easy to regulate the surge in demand for electricity, and the megatrends of urbanisation, mobility, digitisation are energy-intensive. So, governments focus on what can be managed—finding the most affordable ways to supply it. In the past, the considerations of geopolitical risk and energy security swayed policymakers' decisions to set up power plants on own territory. It was not a smart move to give an unfriendly neighbour the means to switch off lights. This has grown less relevant with sufficient home-grown capacity and with the subcontinent getting more globalised with the consequent need of ready and affordable power to run their factories and supply chain.

Private participation could be the surprise differentiator. State-owned companies dominate power flows over transnational grids in the developing world. In our case, however, the restrictions on using linkage coal and higher uncommitted capacity in the private sector could see them embrace cross-border trade more readily. So, we are more likely to transcend geopolitics and focus on getting the core technical and regulatory protocols right for power trade.

It can be a game changer. Cross-border networks are hard to establish (constructing new lines, agreeing on dispatch procedures, synchronising grid frequency), but they are long lasting and promote regional cooperation. The benefits from resource sharing are plenty. As Bangladesh's power minister noted, they run a surplus in the winters when Nepal goes through a lean season, giving them an opportunity to export power. This complementarity of demand curves means both countries get to use their generating assets more efficiently. Such opportunities exist within a regular day, too. The peak demand of an urbanising India is growing faster than average demand, and is best met by imports from Bhutanese hydro plants, where the system peaks hours earlier.

The diversification of energy sources offers a solution to certain pressing challenges. The rapid expansion of renewable energy and household electrification, which heightened the risks of curtailment and decline in quality of supply, can be mitigated by integrating Bhutan and Nepal hydro plants with our grid. This is more environment friendly than our current ancillary market dominated by coal-fired power plants. IPPs are keen, too, to mitigate regulatory and commercial risks by selling to diversified markets.

Developed markets (Nordic, the UK, Canada-US) trade in large volumes of energy to take advantage of lower costs of production and mutual diversification to improve efficiency of their energy sectors. The new regulations for cross-border power trade offer hope that South Asia can do this, too. The future step, to plug into the ASEAN regional grid allowing power flows to the growing markets of Myanmar, Thailand and Vietnam, will, then, be an easier one.

Using FCPA dataset to tackle corruption

India is the fourth-highest location of corrupt payments during 2009-18 under US Foreign Corrupt Practices Act

MALLIKA MAHAJAN & PAWAN KUMAR SINHA

Mahajan is principal commissioner, Central Board of Indirect Taxes & Customs, India. Sinha is director, International Anti-Corruption Academy, Austria

A NATION DOES NOT have to make a Faustian bargain to get laundered money back to its coffers. Sometimes, to borrow Rumi's words, what we seek is seeking us. The government has taken measures on prevention of formation and return back from foreign shores of black money, like grandfathering double taxation avoidance treaties with Mauritius and Singapore, signing the FATCA with the US and Switzerland, pan requirements for high value purchases (jewellery, cars, houses). There is investigation of Indians named in Panama Papers and Paradise Papers leaks. These are, at best, inchoate methods. A more granular, relevant and developed dataset exists in this field and it will not be amiss to conflate it in this matter. This is the leniency agreements signed under the Foreign Corrupt Practices Act.

The US passed the FCPA in 1977, criminalising bribery of foreign public officials for the purpose of obtaining or retaining business. Two agencies are responsible for FCPA enforcement: the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC). The Fraud Section of the Criminal Division of the DOJ is responsible for all criminal prosecutions of foreign bribery under the FCPA, whereas the SEC Enforcement Division is responsible for civil enforcement of the FCPA, for violation of FCPA's anti-bribery books and records, and internal controls provisions.

At the time of its implementation and much after, FCPA enforcement was not done vigorously. Early in FCPA's life, the DOJ instructed US attorneys to only pursue bribery investigations with "express approval from Washington" because of the fear that it could potentially offend or embarrass officials in allied countries. Enforcement of the FCPA began gathering momentum from 2002 onwards.

Federal prosecutors have three options when they investigate a corporation for bribery. They can (1) file an indictment and pursue a prosecution, ending in a guilty plea or a trial, (2) decline to prosecute altogether, or (3) negotiate a pre-trial diversion agreement that places the corporation into a probationary period during which it must comply with the agreement or face prosecution. The pre-trial diversion agreements come in two forms: a deferred prosecution agreement (DPA) or a non-prosecution agreement (NPA), together they are called leniency agreements in this article.

These agreements are a dilution of the corporate criminal liability prevalent in the US. Under this, corporations have a vicarious criminal liability, under which the *actus reus* or the performance of a legally prohibited act and the *mens rea* or criminal intent of an individual who acts on behalf of the corporation are automatically imputed to the corporation. Thus, if an employee or agent of the corporation commits an offence while acting within the scope of his/her employment, and acting, at least in part, to benefit the corporation, the corporation is criminally liable.

But the Arthur Anderson case necessitated some changes. In 2001, Enron faced criminal prosecutions. Enron's auditor, Andersen, was convicted on June 15, 2002, by a federal jury for obstructing justice in an official proceeding of the SEC, because it passed instructions to its employees to destroy documents relating to its accounting work for Enron. After its conviction in August 2002, the firm stopped auditing public corporations; by end-2002, Enron, which employed 85,000 people, was left with only 3,000. Eventually, it dissolved.

In January 2003, then Deputy Attorney General Larry D Thompson issued a memo entitled *Principles of Federal Prosecution of Business Organizations*; it was binding on all DOJ prosecutors. It authorised agreements of NPAs and DPAs in exchange for corporate cooperation. The *Principles*, now set forth in the US Attorney Manual, explicitly instructed prosecutors to "consider the collateral consequences of a corporate criminal conviction or indictment in determining whether to charge the corporation with a criminal offence and how to resolve corporate criminal cases." In the FCPA cases, DPAs and NPAs began to be used from 2004 by the DOJ. The SEC began using the agreements from 2010.

In a DPA, the prosecution files a charging document with the court, but requests that the prosecution be 'deferred' for the duration of the agreement. DPAs require defendant to admit relevant facts, commit to certain compliance/remediation, and pay a fine. If the defendant complies with the agreement, then the prosecution withdraws the charge. DPAs are subject to judicial review and approval. Unlike a DPA, an NPA does not involve the court. The other conditions remain the same as a DPA.

These leniency agreements enable limited resources to be focused on egregious crimes. NPA/DPA are cost-minimisation devices for corporations as they do not face criminal indictment if they complied with terms of agreement, avoided criminal conviction, associated collateral damages of a long-term fall in share prices, class action law-suits and debarment from government contracting. In case of medical products manufacturers, there was additional threat of excluding them from receiving medicare payments for their products.

The agreements induce self-reporting by corporations that fear adverse publicity, jail terms for senior managers, penalties and sanctions. So, they incentivise huge corporate investment in compliance.

The leniency agreements are given to a corporation when it voluntarily self-discloses misdemeanour, cooperates with the DOJ and SEC in the ensuing investigation, and appropriately remediates the misconduct. Till date, 44% corporations have self-reported their own violations of the FCPA.

Corporations have to act with alacrity and invest millions of dollars in investigation of their corrupting of foreign public officials throughout their global empires. The gold standard is to engage outside counsels, complete the investigation and report the findings in least possible time, to get the benefit of leniency agreements.

India is the fourth-highest location of corrupt payments during 2009-18 under the Act. Although foreign companies that trade on US exchanges must comply with the FCPA, foreign public officials who are recipients of bribes are outside its purview. This appears to be a conscious decision in order to avoid treading upon sovereignty of foreign nations. Other than holding foreign officials who are recipient of bribes to be criminally liable when they use the US financial system to launder their proceeds of corruption, the US has left untouched demand side of foreign corruption. This dataset resultant of sacralised investigations can be useful to tackle corruption and its secretion abroad by a country like India, and can also be used to address systemic reforms to eliminate clogs, which have become festering points of harassment for foreign businesses. This will also help in easing regulatory ecosystem in India, making it more investor friendly.