

# Opinion

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## Any money-for-poor plan must be linked to reforms

UBI just a palliative—farmers lose ₹2.5 tn p.a. as markets not free; jobs vital as a ₹1,500 p.m. UBI equals just a few days' wages

**C**ONGRESS PRESIDENT RAHUL Gandhi has certainly stolen a march over prime minister Narendra Modi in announcing some version of a Universal Basic Income (UBI)—he has spoken of a Minimum Income Guarantee (MIG) for the poor—and, given the rush to make announcements for farmers, especially after the last round of assembly elections, chances are the government will outline its plan in the budget. Details of Gandhi's scheme are yet to be fleshed out, but if it is aimed at the poor as defined traditionally, by the Tendulkar poverty line, the scheme may not be that big given how the number of poor continues to fall; it could, though, be aimed at the bottom 15-20% of the population to get more traction. Modi's scheme, on the other hand, is expected to be aimed at the country's farmer population, but whether this is to cover all farmers or just those below a certain size is not clear; while Telangana's Rythu Bandhu is criticised as being pro-rich-farmers, Odisha's Kalia is supposed to take care of this by targeting even the landless.

But while talk of a UBI, or a modified UBI, has become commonplace, nothing helps increase well-being more than economic growth and jobs. A UBI, then, is at best a partial solution to alleviate hardship, it cannot be a substitute for free markets or high economic growth and employment prospects. Based on OECD-Lcrier analysis of farmers getting 14% less than global prices due to markets not being free in the country in FY01-17, for instance, this means farmers lost around ₹2.5 lakh crore this year; no estimate of possible UBI for the farm sector is even close to this number. Similarly, if a ₹1,500 per month UBI is given per family, this is at most equal to a few days' wages for a family. Indeed, one of the problems with the MIG for the poor is that, in critical ways, it resembles the plethora of anti-poverty schemes of the type Indira Gandhi popularised since those availing of it will have to prove they earn less. So, it is going back to fudging income certificates as, the less you earn, the more MIG you will get.

Apart from this, whatever schemes are announced, by either the government or the Opposition parties, need to fulfil two criterion to be useful—they mustn't be easily cornered by the rich in the manner that farm loans, wheat/price procurement and fertiliser subsidies are today and, two, they have to be financeable. Income transfers to replace food subsidies will save at least ₹50,000-60,000 crore a year without leaving anyone—except those who live off the waste in the FCI system—worse off. Even if 80 crore persons covered under the food security Act—excessive by any yardstick—are given ₹25 per kg as the difference between the ration- and market-price for each of their 5 kg monthly wheat/price entitlement, that will still cost just ₹120,000 crore as compared to ₹170,000-180,000 crore spent on food subsidies right now. Similarly, the ₹70,000 crore of annual fertiliser subsidies and ₹15,000 crore of interest subvention on crop loans can easily be added to the UBI kitty since, instead of just the top 20-30% of farmers getting them as they do right now, the money can be given to all farmers. Sadly, while the government seemed to be moving towards a UBI with its direct benefits transfer (DBT) scheme—these rose from ₹7,368 crore in FY14 to ₹231,732 crore so far in FY19—it hasn't moved to cash transfers from physical transfers of food and fertilisers. Doing so would not only save money, it would also remove distortions in market pricing. Cropping patterns, then, will no longer be distorted by government procurement or MSPs, nor will water-intensive crops be grown in unsuitable areas due to the availability of almost-free electricity and water in some states; and, with fertiliser prices rising, farmers would use them judiciously, and even import them if that is cheaper. In short, UBI is Modi's window to sweeping agriculture reform with the added advantage of helping small and marginal farmers as well.

## Getting India to eat right

School-meals a key tool to tackle both hunger and obesity

**A**MINT ANALYSIS of NSSO data on the nutrient intake of Indians, juxtaposed against a reference 'ideal' diet a new *Lancet* report prescribes, shows Indians aren't eating right. Indians, both rural and urban, are eating a lot more carbohydrate than *Lancet* recommends as part of daily intake, and much lesser protein (from both plant and animal sources). Fruit and vegetable consumption is also much lower than the recommended amount. While Indians are consuming sweeteners (chiefly, sugar) in lesser amounts than recommended, bad nutrient sources account for over 200 kilocalories (kCal), against a total recommended calorie intake of 2,500 kCal. The nutrition 'gap' is worse for the rural than the urban population—against nearly every metric (junk food and eating out are two notable exceptions), rural Indians have more unhealthy diets than urban Indians. Though with increasing income, Indians seem to be diversifying their sources of nutrition further, protein intake—higher incomes are correlated to protein accounting for a larger part of the daily diet—remains a problem. In fact, the *Mint* analysis claims that there is a jump in junk food consumption with rising incomes.

Diet-related lifestyle diseases contribute a chunk of the non-communicable disease burden in India that now accounts for six out of ten deaths in the country from disease—16% of adult men and 22% of adult women in India are overweight and childhood obesity is becoming a serious threat. At the same time, 38% of Indian children suffer from stunting. Getting India to eat right needs the right policy call on different types of malnutrition. The Integrated Child Development Services (ICDS) and the mid-day meal (MDM) schemes have had some impact in curbing stunting amongst children. Given the Poshan Abhiyaan (National Nutrition Mission), that seeks to reduce the level of stunting to 25% by 2022, targets adolescent girls, pregnant and lactating women, it ties up rather well with ICDS and MDM to target under-nutrition. However, on the obesity front, the government (both Centre and the states) are yet to come up with any consolidated policy to fight this. In this context, Japan's experience with using mid-day meals at schools to fight obesity offers an important lesson. Under a government programme, school cafeterias in Japan give students—elementary to senior secondary—wholesome meals that are free of processed and junk food. Parents who can afford to pay can choose to do so; otherwise, school children get balanced, nutritious meals without being charged for it. While even the food standards regulator has called for a sin tax on junk food, this seems a bad idea as the bulk of consumption of such food is by income-groups where such taxes may not have much impact given it is a matter of taste more than affordability for them.

## RealTest

India rejoining PISA will facilitate necessary international comparisons of important learning outcomes

**G**IVEN HOW DESPERATELY education policy in India needs to be geared towards driving up learning outcomes, India's decision to rejoin the OECD's Program for International Student Assessment (PISA) is welcome news. PISA assesses the quality of education systems across the world by evaluating students in science, mathematics, reading, collaborative problem solving and money literacy. In the 2009 survey, after having placed 72<sup>nd</sup> amongst 74 nations, the government simply opted out of PISA, citing a "socio-cultural disconnect between the questions and Indian students' learning".

Even if that line of argument was not entirely without merit, walking out definitely wasn't the best option. With OECD having agreed to tailor its assessment questions to the Indian context, India is now open to joining it. As per UNESCO data, India has one of the lowest public expenditure rates on education per student—it spends \$264 per student per year compared to \$1,800 spent by China. The ASER 2018 report also highlights falling reading and arithmetic learning levels among the secondary school-goers. Students from Singapore, Japan, Taiwan, Vietnam, and China have consistently been the top performers of the PISA and the test allows for international comparisons of important learning outcomes, driving forward and encouraging improvements in the country's education system. Unlike in 2009, the PISA in 2021 will be administered across all schools in Chandigarh and all Navodaya Vidyalayas and Kendriya Vidyalayas in the country. In order to obtain a fair and representative assessment of learning outcomes, though, it would have been better if the government had agreed to include students from private schools as well.

## THE REAL MAINSTREAM

THERE IS NO SUCH THING AS ENVIRONMENTALLY SOUND AND SAFE RAT-HOLE COAL MINING AND HENCE THIS PRIMITIVE PRACTICE MUST BE BANNED FOREVER

# Meghalaya's mining quandary

**CHANDRA BHUSHAN**

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acidic, leading to mass fish kills.

What we found most galling was the impunity with which the laws were being broken. None of the rat-hole mines had leases. In fact, there was no record of mine leases with either the ministry of mines or with the department of mining and geology. These mines simply didn't exist on paper. Hence, all of them were operating without any environment clearance from the ministry of environment, forest & climate change (MoEF&CC) or consent from the Meghalaya State Pollution Control Board (MSPCB). In fact, MSPCB informed us that, as these mines are not registered, they can't enforce the environmental laws. These illegalities were enabled by the so-called legal ambiguity regarding mining in the areas falling under the Sixth Schedule of the Constitution.

The Sixth Schedule deals with the provision related to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram. It provides for the establishment of autonomous districts and regions and details the powers of autonomous councils. In autonomous districts, District Councils have many powers, the most important being the power to levy certain taxes and the power to make laws with respect to the 'allotment, occupation or use, or the setting apart, of land'.

A falsehood was spread in Meghalaya that, as it is a Sixth Schedule state, and the power to make laws with respect to land belongs to the District Councils, landowners can mine without any lease or permissions from the state or the Central go-

ernment. To bolster the above falsehood, another myth was perpetuated—that the coal mines in Meghalaya were never nationalised.

Our partners in Meghalaya prepared a legal paper which clearly refuted the above falsehood. They found that the coal mines of the Khasi and Jaintia coalfields were nationalised under the Coal Mines (Nationalisation) Act, 1973. They also found that paragraph 9 of the Sixth Schedule not only stipulates the need for 'licences or leases for the purpose of prospecting for, or extraction of, minerals', but also how 'the royalties accruing each year from licences or leases' would be shared between the state and the autonomous District Councils.

RTI replies from the ministry of coal, ministry of mines and MSPCB informed us that all Central mining laws, like the Mines and Minerals (Development and Regulation) Act (MMDR Act), and environmental laws like the Envi-

ronmental Protection Act, 1984, the Water Act, 1974 and the Air Act, 1981 are applicable to the coal mines in Meghalaya. Based on the scientific and legal information, we organised meetings in Shillong and Tura and informed the state government, district administration and the autonomous councils of the need to implement the legal provisions. But, alas, while everyone agreed with our findings, none committed to do anything. We handed over the report to the local activists with the hope that the information would be used to build pressure on the government to improve the situation.

**The right to self-government does not translate into the right to pollute and destroy the environment, even in Sixth Schedule areas**

The state government did nothing but, on a case filed by the All Dimas Students Union that highlighted the unscientific and unregulated coal mining operations in the Jaintia Hills, the National Green Tribunal (NGT) finally declared rat-hole mines as illegal and banned their operations in April 2014. However, following the representation from the miners and the state government, NGT allowed the transport of already-mined coal on payment of royalty and environmental restoration fees. Since 2014, the NGT and the Supreme Court have granted multiple extensions to miners to take out and sell already-mined coal. But reports now clearly indicate that the extension of the deadline for transportation was used by the miners to do illegal mining all along. The state government knew this because they have collected more than ₹1,300 crore royalty and fees from coal during this period. Coal mining in Meghalaya has huge political patronage. The benefit of coal mining goes to tribal heads, a few landowners and the political class. The local community, in whose backyard coal is mined, hardly benefits from these mines. We should, therefore, not expect much from the state government.

In fact, instead of stopping the illegality, the state government has challenged the NGT ban in the Supreme Court. The State Assembly in 2015 adopted a resolution urging the Central government to exempt Meghalaya from the provisions of the MMDR Act and the Coal Mines (Nationalisation) Act, so that rat-hole mining can continue.

But the fact is rat-hole mines are just too environmentally damaging and unsafe to be allowed. One of the key conclusions of our report was that there is no such thing as environmentally acceptable and safe rat-hole mining and hence this primitive practice must be banned forever. Our other key conclusion was that no mining should be allowed without fulfilling the obligations under various laws, especially environmental and safety laws. The bottom line is the right to self-government does not translate into the right to pollute and destroy the environment, even in Sixth Schedule areas.

## LETTERS TO THE EDITOR

### Underlying security

It is important to establish a cyber-risk management framework to preserve integrity and information security in trading operations. It is prudent to mitigate investment risks and promote portfolio diversification by improving the overall marketability across various asset classes to increase R-o-R for participants and revenue/turnover for the bourses. However, to prevent unforeseen price volatility, leakage of sensitive price/earnings data and inflationary pressures in the economy, a viable regulatory framework is needed to cap investments and monitor the trade sessions. Increased overlap/alignment with international markets and greater institutional participation on intraday basis does increase the exposure of retail holdings to liquidity/re-investment risks — Girish Lalwani, Delhi

### A low in Karnataka politics

The spate of incidents on Monday is a new low in Karnataka politics. While former chief minister Siddaramaiah, in a fit of anger, shouted at a woman and snatched the mike from her, HD Kumaraswamy lost his cool and threatened to resign from his post if the Congress party leaders fail to rein in their MLAs. In another incident, BJP leader and Union minister Anant Kumar Hegde courted controversy with an insensitive comment against state Congress chief Dinesh Gundu Rao which drew sharp responses from the 'grand old party', including its chief, Rahul Gandhi. Our leaders ought to raise the bar in public life and behave in a more dignified manner — Ravi Chander, Bengaluru

Write to us at feletters@expressindia.com

## Warnings from the global trade cycle

After a brief two-year rebound in 2010-2011, world trade growth averaged just 3.6% from 2012 to 2018—about half the 7.1% average annual pace in the 20 years before the crisis

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**AS THE TRADE** cycle turns, so goes the global economy. But there is a new twist. With growth in global trade sharply diminished since the 2008-2009 global financial crisis, an upsurge of protectionism and disrupted global supply chains is all the more problematic. There is a distinct possibility that a turn in an already weakened trade cycle could spark a surprisingly swift deterioration in the global economy. Early hints of just such an outcome are evident in the January update of the International Monetary Fund's *World Economic Outlook*.

While the IMF has revised downward its 2019 forecast of world GDP growth by 0.2 percentage points (from 3.7% to 3.5%), it has made just a fractional reduction to its projection of 4% global trade growth. This is certainly puzzling. In a climate of increased tariffs between the US and China, with threats of more to come, and given Brexit-related risks to eurozone trade, there is good reason to look for more significant downward revisions to the global trade outlook.

This would be especially problematic, given the world economy's support from global trade is already on shaky ground. Following a crisis-induced plunge of 10.4% in the volume of global trade in 2009—a modern-day record—recovery has been muted. After a brief two-year rebound in 2010-2011, world trade growth averaged just 3.6% from 2012 to 2018—about half the 7.1% average annual pace in the 20 years before the crisis. To be sure, the slowdown in world trade may be traceable to the global economy's relatively weak post-crisis recovery.

But the ratio of growth in global trade relative to growth in world output—an indicator that normalises for different recovery trajectories—says otherwise. In the two prior expansions—1985-1990 and 2002-2007—this ratio averaged 1.6: in other words, once the cyclical noise of post-recession rebounds subsided, growth of global trade was about 60%

faster than growth in world GDP. By contrast, in the current expansion, that ratio has averaged just 1.0 over the comparable 2012-2018 period, with global trade having slowed to a pace only equal to the growth of world output.

Debate rages about why growth in global trade has slowed so sharply in recent years. Extensive research published by the IMF in late 2016 attributed the slowdown largely to subdued business capital spending, finding only small effects from protectionism. Yet, the world has changed a lot in the subsequent two years. While the capital spending shortfall persists—despite a temporary increase from large corporate tax cuts in countries like the United States—there has been a marked increase in protectionism, with attendant pressures on global supply chains. As a result, a rethinking of the IMF findings is in order.

US president Donald Trump's administration has obviously taken the lead in moving from trade liberalisation and globalisation to protectionism and fragmentation. One line in Trump's inaugural address said it all: "Protection will lead to great prosperity and strength". Rhetoric quickly gave way to action and was followed in short order by US disengagement from the Trans-Pacific Partnership, replacement of NAFTA with a higher-cost USMCA (United States-Mexico-Canada Agreement), and, of course, a succession of tariff hikes against China. Withdrawal from the Paris climate agreement, threats to pull out of the World Trade Organization, and complaints about NATO participation round out US disengagement from multilateralism and the global trading system that it has long supported.

Against this backdrop, a rapidly unfolding China slowdown is all the more problematic. While recent GDP data point to only a slight deceleration in late 2018—6.4% annual growth in the fourth quarter versus 6.5% in the third quarter—monthly data revealed sharp declines in

December retail sales of key discretionary consumption items such as automobiles and mobile phones. Reflecting this deterioration in domestic demand, Chinese imports plunged by 7.6% in the 12 months ending in December, a worrisome about-face after a 16.1% gain in 2017. At the same time, China's exports fell 4.4% in December as tariff-related weakness in US markets finally appears to be taking a meaningful toll. Needless to say, depending on the outcome of US-China trade negotiations, there could well be more bad news for Chinese exports to the US.

Moreover, while China is moving aggressively to counter the cyclical shortfall in domestic activity, it could be several months before its policy moves start to take hold. In the meantime, risks remain very much on the downside for Chinese import demand. That underscores a key risk to the IMF's latest forecast: China is the world's largest exporter and second-largest importer. Its negative impact on an already weakened global trade cycle is only just starting to become apparent. The disruptive effects of Brexit can only exacerbate this problem.

The eurozone, as a whole, ranks right behind China amongst global exporters and slightly above China as the world's second largest importer. With exports to the United Kingdom accounting for about 3% of the European Union's GDP—considerably higher for Belgium, Ireland, and the Netherlands—Brexit-induced frictions to global trade can hardly be taken lightly. All in all, the global trade cycle is facing major stress in 2019, and mark-downs have only just begun.

This underscores the risks of a major shortfall in world GDP growth. In a still tightly connected world, no major economy will be an oasis. That includes the US, whose 45<sup>th</sup> president continues to insist that it is easy to win a trade war. Maybe not.

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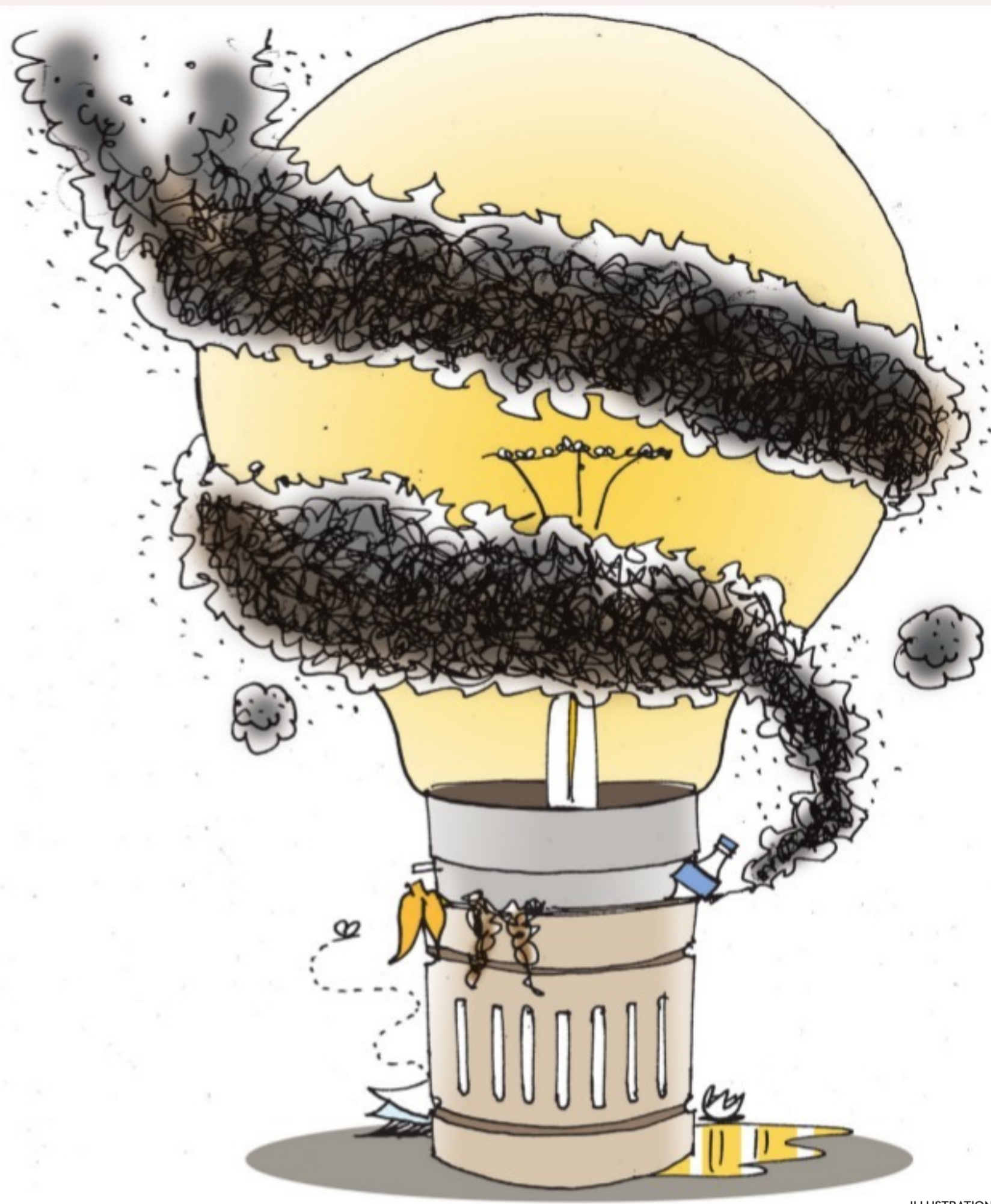


ILLUSTRATION: ROHNIT PHORE

## ISHER JUDGE AHLUWALIA & ALMITRA PATEL

Ahluwalia is chairperson, ICRIER, and former chairperson of the high-powered expert committee on urban infrastructure and services, and Patel is member, Supreme Court committee on solid waste management



### ● CITIES AT CROSSROADS

# A dangerous and wasteful 'solution'

A feedstock of unsegregated municipal waste and inadequate checks against toxic fumes make waste-to-energy plants a bad option for India

**WE WISH WE COULD** scream loud enough for our readers and the municipal authorities to hear that Waste to Energy (WtE) plants in our cities, using inadequately segregated municipal waste as feedstock, are highly dangerous because of the toxic gases and particulates they spew when they burn mixed waste in the process of incineration.

Residents of Okhla and surrounding areas in Delhi have been protesting that the WtE plant in their vicinity is not complying with the stipulations of National

Green Tribunal (NGT). Is it too much for an urban locality with houses, hospitals, schools, and shops to want that there be no industrial polluter in their midst? With its location within 30 metres of the residential areas, emissions remain a major issue with the residents. The plant was slapped a fine of ₹25 lakh in February 2017 by the NGT, but many questions about air quality standards in the area remain unanswered, including why the plant spews soot and ash in the neighborhood.

To rub salt on the wound, we understand that the authorities are considering the expansion of this WtE plant from

16 MW to 40 MW! The latest protests by the residents at a public hearing were reported in the press only a few days ago. The residents claim that the plant's original Environmental Impact Assessment (EIA)—issued to IL&FS—bears no resemblance to the plant now in operation. A new EIA has been filed for the proposed expansion, and they are very apprehensive about the proposal to add two new boilers.

There are five municipal WtE plants operational in India, with a total capacity to produce 66.4 MW electricity per day, of which the lion's share, 52 MW per day, is generated in Delhi by its three existing plants (as reported to Parliament on March 15, 2018 in an answer to a starred question). There is also talk of setting up a new municipal WtE plant with capacity of 25 MW at Tehkhand in South-East Delhi. The bandwagon is rolling on, with many cities across different states vying for such plants as a quick and lazy solution to the very complex challenge of solid waste management in urban India.

Why are WtE plants using municipal waste so harmful for us?

The WtE plants in India burn mixed waste. The presence of chlorinated hydrocarbons like PVC in our waste results in the release of dioxins and furans when the waste is burnt at less than 850°C. Appropriate filtering mechanisms need to be installed to control such dangerous emissions. Dioxins and furans are among the most dangerous chemical agents. They are known to be carcinogenic and can lead to impairment of immune, endocrine, nervous, and reproductive systems. They are extremely difficult and costly to measure as the experience of Okhla shows. In the past, joint inspections involving the residents, as mandated by NGT, have shown that the plant was being operated without adequate use of activated charcoal for filtering out dioxins, furans and mercury from the emissions.

Even when incineration takes place under optimal conditions, large amounts of flue gases, mercury vapour and lead compounds are released, and there is

always about 30% residue from incineration in the form of slag (bottom ash) and fly ash (particulate matter) which are also known to be serious pollutants of air and water. Even people living in the neighborhood of the best maintained plants in the West are said to be prone to higher levels of cancer and other illnesses (P Elliott, Cancer Incidence near Municipal Solid Waste Incinerators in Great Britain, British Journal of Cancer, 2000). That is why WtE plants are being phased out in the West. Unfortunately, while the clamour for WtE plants is growing in India, their operations are neither strictly maintained nor adequately monitored to protect the health of our citizens.

SWM Rules 2016 require that PVC be phased out in incinerators by April 2018. But it is impossible to identify and remove PVC beverage labels, for example, from mixed waste streams. As a preventive measure, NGT directed the Ministry of Environment and Forests (MoEF) to consider phase out of such single-use, short-life PVC and issue appropriate directions by July 2017. Their failure to do so till date is inexcusable.

Why are WtE plants in India? Municipal waste in India has a very high biodegradable (wet) waste content ranging anywhere between 60 and 70% of the total, compared with 30% in the West. This gives our waste a very high moisture content and very low calorific value. Also, since Indian households have traditionally been recycling their waste such as paper, plastic, cardboard, cloth, rubber, etc, to kabadiwalas, this further lowers the calorific value of our waste, which is about 1000-1300 Kcal/kg. In contrast, the calorific value of municipal waste in the West is much higher—about 1900-2800 Kcal/kg (World Energy Council Report 2016) which leads to much higher efficiency in their WtE plants.

India's Solid Waste Management policy requires that wet and dry wastes should not be mixed so that only non-compostable and non-recyclable wastes with at least 1500 Kcal/kg should reach WtE plants. Such waste comprises only 10-15% of the total waste. The challenge of segregation at source is compounded by the municipal governments themselves when they use compactors to reduce the transport cost of the waste. Compacting compresses the waste and makes even gross segregation at the plant site impossible. In the absence of adequate feedstock of non-compostable and non-recyclable waste, it becomes necessary to use auxiliary fuel, adding to the cost of operating the plants.

Private companies (mostly foreign) are keenly hawking "waste to energy solutions" to handle our growing volumes of urban waste. Our urban local bodies which bear the responsibility for solid waste management in our cities, are easily misguided into adopting these "solutions". They are themselves reluctant to make an effort at keeping wet and dry wastes, recyclable and non-recyclable wastes, unmixed. They find WtE plants an easy option to legitimise the burning of mixed waste.

Municipal authorities should be made aware that WtE technologies are being phased out in the West. They should not be allowed unless the waste offered meets the criterion specified in the SWM Rules 2016. A crucial element of enforcement will be to first ensure that the waste is not mixed at the source of generation and then that the handling of waste is in unmixed streams. Even where outsourcing contracts clearly specify that handling must be in unmixed streams, there should be strict penalties for non-compliance.

To summarise, Waste to Energy plants using municipal waste from Indian cities as feedstock pose a serious threat to our health and environment. We do not even have the municipal waste of the quality prescribed by our own SWM Rules to run such plants let alone the regulatory and monitoring capacity to ensure their safe operations. We must seriously explore low cost options such as composting and bio-methanation. First things first: no mixing of waste at the point of generation.

## SC upholds IBC spirit

**K SRINIVASA  
RAO**

Director, NIBSCOM  
Views are personal



Now, make it resolution-centric instead of liquidation-centric

**T**HE JUDGMENT OF THE Supreme Court upholding the legal sanctity of Insolvency and Bankruptcy Code (IBC) can bring a tectonic shift in the loan repayment culture. It asserts that the defaulters cannot bid for the assets of the insolvent company in terms of amended section 29 (A) to regain control while lenders are forced to take a haircut. It also tames the attitude of Committee of Creditors (CoC) and provides a clear and firm guidance that its decisions cannot be arbitrary, as was seen in the recent stance in the Essar Steel case. It asserts that CoC is not the ultimate link in the value-chain of IBC. It also removes many of the apprehensions of key players engaged in implementing IBC.

The spirit of judgment, read in conjunction with the series of pronouncements of National Company Law Appellate Tribunal (NCLAT) and the amendments in the Operational Regulations brought about by Insolvency and Bankruptcy Board of India (IBBI), makes it clear that the purpose and objectives of IBC is becoming sharper. NCLAT stated clearly that the order of priorities in achieving the objectives of IBC—resolution, maximization of value of assets of the corporate debtor or set of stakeholders such as creditors and promoting entrepreneurship while ensuring availability of credit and in the process—are time-bound and sacrosanct.

Imbibing best global practices in IBC implementation to come up with judgments on the various interlocking issues is important. Banks and other stakeholders must redesign their internal operational guidelines and train their human resources to integrate the spirit behind the IBC.

Data shows 1,298 claims against delinquent entities were admitted into Corporate Insolvency and Resolution Process (CIRP) besides 288 voluntary liquidation cases till December

1, 2018. Out of admitted cases for CIRP, 52 (4%) have been resolved till September 2018 with 46% average recovery. Another 259 cases (20%) have gone into liquidation and 987 (76%) cases at various stages of adjudication. The pendency status on September 30, 2018, shows that the 270 days upper cap (180 days plus 90 days moratorium) was breached in 238 cases; a further 158 cases are beyond 180-days old but are within 90 days moratorium. In another 420 cases, the 180-day period is not yet over.

Coming to the outcome, of the first lot of 12 stressed large loan accounts referred to NCLTs, only four have seen resolution. According to RBI, the average recovery by banks was as much as 41.3% in FY18, against 12.4% recovered through other mechanisms such as SARFAESI Act, Debt Recovery Tribunals, etc. But, according to the NCLT data, 4,452 cases were disposed at pre-admission stage with borrowers paying up ₹2.02 trillion to settle their dues. The threat of invoking IBC is itself enough to prevent defaults and to reinstate the sanctity of debt contract.

Many debtors are now trying to find innovative methods to repay dues or service loans on time or even earlier to avoid defaults. Sale of non-core assets, divestment in group companies, release of investments, sale of idle properties and even capping diversification plans and focusing on consolidation of business and other options are being weighed by them. Thus, honouring loan commitments is gradually becoming a priority for borrowers.

IBC has had a tremendous impact on the asset quality of banks, though stakeholders are still struggling to adjust to the legislation's evolving nuances. The only sore point is there are many instances of liquidation instead of revival. The operational ecosystem will mature with successive judgments clearing the position of the law on greater institutional support to the adjudicating authority and players' inter-se.

The path forward should bring units back from collapse and ensure the greater good to society. The resolution experts and turnaround professionals will have to evolve alternate restructuring plans in coordination with lenders to eventually strengthen resolution. Even invocation of IBC should also evolve as a tool of last resort. The judicial affirmation, via the apex court judgment, of the IBC can bring about a cultural shift.

## MEDICAL DEVICES

# For more effective price regulation

The issue of trade margins will only get bigger with Ayushman Bharat's affordable-care

**RAJEEV AHUJA &  
KEERTI BHUSAN  
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**T**HE BURNING ISSUE facing the medical device industry in India—manufacturers, importers, traders (stockists/distributors), and retailers—is a quick resolution to the issue of price capping of selected medical devices. To check rampant "profiteering" by the industry which is detrimental to the interest of patients, the government took the extreme step of capping the prices of selected devices such as cardiac stents and knee implants in 2017.

Though inefficient for its detrimental effect on innovation, price regulation was meant to send a clear signal to the industry to self-regulate or be prepared for harsh regulatory measures. It turns out that why-regulation by the industry is not feasible. Self-regulation by the industry is not feasible. Why? Because hospitals—the frontline service providers who are de facto retailers—often want the highest possible retail prices printed, for they want to profit not only for the clinical services they provide but also from the sale of devices. As a result, the medical device industry now wants the government to intervene, and suggests regulating trade margins instead of capping prices.

Trade margin is the difference between price at which the manufacturers or importers sell to trade (or price to trade) and the price to patients (maximum retail price or MRP). Regulating trade margins retains the incentive of the industry to innovate while reducing the cost burden on patients.

The government seems receptive to the idea. However, no policy decision has been taken so far. The government is yet to take a stand on the criteria to adopt in calculating trade margins. NITI Aayog had prepared a concept note to bring clarity on the issue of fixing MRP based on capping of trade margins. In the concept note, it had indicated three different methods for calculating MRP.

All three methods have one thing in common—that trade margin is expressed as a mark-up over "base" price of devices. The difference among these methods is in the manner in which "base" price is defined. The first method considers using "landed cost" (price to importers) as the base price while the second

method considers price at which a device is sold to stockists ("price at first point of sale") as the "base" price. The argument given in support of the second method is that importers often have to incur certain expenditures such as on training clinicians and servicing patients that get accounted for in the price at which a device is sold to a stockist. With the capping of trade margins, such expenditures will have to be borne out of permissible trade margins. However, the argument in favour of the "landed cost" is that importers are also traders, and they could thus bear those expenditures out of permissible trade margins. The difference between these two methods boils down to



(i) whether trade margins are enough to accommodate those expenditures and (ii) if a standardised method is appropriate for devices that are so heterogeneous in nature. This is where the third method scores over these two methods.

The third method is similar to the first except that it specifically allows for expenditures on training clinicians and servicing patients. Information on such expenditures could be provided by the manufacturers/importers based on actuals. These expenditures as well as trade margins are expressed as a mark-up on the "landed" costs. This method is superior on certain counts.

First, the method not only allows sepa-

rately for these expenditures but also recognises that such expenditures to class of devices and thus allows for variation in such expenditures. Second, reliance on manufacturers'/importers' provided data for determination of such expenditures brings in realism rather than using some arbitrary criteria. Finally, the government will need to specify what kind of expenditures are "permissible" and bring greater clarity and transparency on the issue of such expenditures. Any falsification of data by manufacturers'/importers' can always be discouraged through imposition of heavy penalties.

With the market size of \$10 billion, the medical device industry in India is already

significant and is growing rapidly. There are already a few thousand types of medical devices, and this range is only going to widen over time as a result of innovation. Of the several thousand types of medical devices, trade margin regulation is currently being applied only to half-a-dozen devices. But this regulation could potentially be extended to other life-saving devices too. In fact, the government is thinking of bringing over 400 medical devices under this ambit, as per recent media reports. Therefore, the issue of trade margins will only grow in importance as India marches towards universal health coverage with emphasis on affordable care.

Media reports indicate that NITI Aayog had sent a proposal to the PMO, suggesting to implement the trade margin cap at around 65% from distributor onward. The proposal was rejected by the PMO, asking NITI Aayog to rework on it. If the government accepts the third method, for which there is a sound rationale, the trade margin cap will also need to be reworked.

As and when NITI Aayog develops a revised proposal, it needs to take a durable perspective on this issue and provide a medium-term guidance rather than dealing with the immediate problem at hand. Similarly, the medical device industry (including hospitals) needs to recognise that the government is committed to ease of doing business but not to ease of "profiteering", at least, not in the healthcare sector.