Time to revisit incentives for justice system

The abiding faith of the society that the man in uniform would never fake his case is of no value unless there is real disincentive for ruining the lives of accused

WITHOUT CONTEMPT

SOMASEKHAR SUNDARESAN

It is a unique version of a real "new India". The apex court in the judicial arm of the state recently took the extraordinary step of releasing from prison, six nomadic tribals convicted of murder, upon an intense and close scrutiny of the evidence involved — literally saving them from the jaws of death. The individuals have been granted compensation of ₹5 lakh each, and released after languishing in prison for 16 years. A probe has been ordered into the investigation officials responsible for fixing the case.

The case underlines issues faced not just with our criminal justice system or for that matter the risk of how infirm the criminal justice system is for tolerating the death penalty. The case holds very valuable lessons that have relevance even for civil proceedings in which, findings that can finish a career or the ability to live without social taint, are returned with similar laxity.

The Supreme Court discovered the incredibly-logical-to-find lacunae in its review — something that three courts, including an earlier bench of the Supreme Court, did not figure out. The six convicts had been held guilty of murdering a group of five individuals and raping a victim in June 2003. In three years (rapid by any global standard), the Nashik Sessions Court sentenced the six accused to death. While the Bombay High Court modified the death sentence for three of them, in 2009, the Supreme Court reinstated death penalty for all of them.

It turned out to be a case of the investigative agencies having framed the accused. The key facet of the reversal was that a survivor of the crime had identified four completely different men from photographs of history-sheeters shown by the police immediately after the crime. However, much later, they identified the six tribals, who went on to to be accused and held guilty. Multiple leads that would logically have had to be followed and investigated were not pursued. A probe into the conduct of the police officials who have not just survived but thrived, has been ordered.

The case holds a host of lessons for regulatory agencies in every sector of activity in the country. Under pressure to meet targets and complete work, officials of regulatory agencies have a perverse incentive to conjecture and surmise that someone is guilty of heinous accusations of fraud or insider trading. When levelled with similar negligence, the accusations alone can finish careers of individuals and ruin entire dependant families -- the civil equivalent of the death penalty.

Movie themes such as "Nobody Killed Jessica" give primacy to societal blood-thirst over the need for precise fact-finding in meting out justice. This has led to now-judicially-acknowledged concepts such as "collective conscience" that judges have said must be catered to. The innate and abiding faith of the society that the man in uniform would never fake his case is of no value unless there is real disincentive for ruining the lives of accused.

In civil regulatory proceedings, for no reason other than the very fact that wrongdoing has been suspected, peoples's lives can be brought to a grinding halt, and that too without a predecisional hearing. In such proceedings, the problem is compounded by the only check and balance -- a post-decisional appeal -- with the decision itself having been arrived at with the regulator doubling up as prosecutor and judge.

That three courts were happy to buy the theory propounded by the investigators in this case, also shows how ineffective judicial oversight can be. Rabble-rousers on prime time television, the blood-rush of popularity when public sentiment is aroused, and basic human frailty can be a potent mix to weaken such oversight.

The only solution to this fundamental problem is to balance the incentive for "solving" a case with a disincentive for faking a solution, and a disincentive for not playing an effective role as a check and balance. The very process of investigation, relentless front-page news coverage of the investigation, (fuelled by the abiding belief of journalists in the veracity of everything dished out by "sources" in regulatory agencies giving "exclusives" — another perverse incentive), are in themselves, a severe punishment. The punishment is for no reason other than being on the wrong side of the law enforcement agencies. The Supreme Court's magnanimous acknowledgement of its earlier bench's mistake is an example to be emulated.

The author is an advocate and independent counsel

CHINESE WHISPERS

A love story

Nirav Modi might have flown the coop but he continues to muddy the waters. During an interaction with the students of Stella Maris College in Chennai, Congress President Rahul Gandhi *(pictured)* replaced the fugitive diamantaire's name with that of the Prime Minister. While answering a question, Gandhi said, "What we want to do is we want to take the money that is going to 15–17 corrupt business people like Naren... not Narendra, Nirav Modi..." As his audience cracked up, Gandhi continued, "...and open the banking system to entrepreneurs like you." When asked why he hugged the Prime Minister during a Parliament debate, he said he felt only love for the Prime Minister. "You know the people who don't have affection towards others? Because they have not been loved... I genuinely feel love for the Prime Minister. You are laughing, but I genuinely do."

Tweet and response

In a series of tweets, Prime Minister Narendra Modi on Wednesday appealed to actors, sportspersons, industrialists and journalists to campaign for voter awareness and increased turnout during the coming Lok Sabha polls. Tagging Opposition leaders Rahul Gandhi, Mamata Banerjee, Sharad Pawar, Akhilesh Yadav, Tejashwi Yadav and M K Stalin among others, the PM said "a high turnout augurs well for our democratic fabric". Samajwadi Party Chief Akhilesh Yadav replied by saying how delighted he was to find the PM appealing to the *mahagatbandhan*, or the grand coalition of the Opposition parties, to bring about a *mahaparivartan* or radical change. Alluding to the fact that Jammu & Kashmir (J&K) was under President's rule, National Conference Leader Omar Abdullah said the right to choose an elected government, as opposed to being governed by a hand-picked nominee of the central government was "the hallmark of the sort of democracy you are tweeting about". "Please give us our democratic right to choose our own government," the former J&K chief minister said.

Lose-lose situation

Looks like the battle in the Thiruvananthapuram constituency this time is for the second spot as both the Left and the Bharatiya Janata Party (BJP) seem to be convinced that sitting MP, Congress' Shashi Tharoor, cannot be trounced. The BJP is likely to field former Mizoram governor Kummanam Rajasekharan as its candidate and the ruling Left Front has pitted senior Communist Party of India leader C Divakaran. But with Divakaran's entry, the BJP's hopes of securing the second spot have suffered a severe jolt. The joke among BJP cadres is that Rajasekharan will make history as the first BJP leader to resign from the governor's post only to bite the dust.

Big brothers are still watching you

The government follows a 2011 protocol for electronic snooping, it revealed in a recent court hearing

NITIN SETHI

In December 2018, the government notified 10 security agencies and authorities that would be allowed to carry out surveillance of all electronic communications, internet-based activity and computers. The agencies were notified to do so under Information Technology Act, 2000. When it faced criticism from some quarters, the Union government responded to say that it was merely ensuring that specifically-listed agencies get to use the long-standing surveillance powers under the IT Act, which were operationalised by subordinate rules formulated in 2009.

In January 2019, several individuals and institutions went to the Supreme Court contending that the regulations as well as the specific provision 69(1) of the IT Act provided wide-ranging powers with less-than-adequate safeguards for the agencies to snoop on the citizens. The section empowers a government to "issue directions for interception or monitoring or decryption of any information through any computer resource". They contended that the regulations did not provide adequate safeguard against misuse of surveillance by the state and violated the Constitution. They said the regulations and provisions of the IT law do not meet the high benchmarks set by the Supreme Court judgments (*K S Puttaswamy versus Union of India,* 2017 and 2018) and last year's Srikrishna Committee report to safeguard Indian citizens' right to privacy against the disproportionate use of surveillance and abuse of snooping powers by the state. The petitioners included two organisations — Internet Freedom Foundation and People's Union for Civil Liberties — and four individuals — M L Sharma, Amit Sahni, Mahua Mitra and Shreya Singhal.

TAKE TWO

The Union government has now responded to the clutch of petitions, revealing in the court the Standard Operating Procedure (SOP) for collection, maintenance and destruction of the electronic surveillance data. These were first set in place in 2011 as a secret protocol. Presenting them the government has claimed the existing safeguards under the law are adequate, lawful, towards a legitimate purpose and provide for a "proportionate interference" in citizens' right to privacy.

In fact, the SOP and the regulations, reviewed by *Business Standard,* follow roughly the same template required for tapping telephones under the Telegraph Act. It gives the top bureaucracy a role in supervising and reviewing whether laid down safeguards are followed by the intelligence and policing agencies while carrying out electronic surveillance. This bureaucratic arrangement remains secret and closed to any kind of parliamentary or judicial, ex-ante or post-facto, oversight — which several advanced economies and democratic countries now require.

The SOP revealed by the government suggests that electronic surveillance being carried out under these regulations may not be merely targeted towards identified individual or groups but could be roving in nature too. The proforma application used by security agencies to request permission for snooping allows designated officials to request electronic surveillance on specified keywords and not just targeted telephone numbers, email or internet addresses. Such keyword-based generic searches to trawl the entire electronic communication pipeline, privacy advocates across the world have often warned, are most prone to abuse and disproportionate breach of citizens' right to privacy. A similar wide-angled monitoring plan by the Union government to trawl and analyse the entire social media scape for "negative" comments and criticism by citizens was partly withdrawn after it was challenged in the Supreme Court and faced public criticism.

The covert electronic snooping by intelligence and policing agencies is based on a legacy legal substratum that the current government has continued. This kind of deep electronic surveillance can be justified by the bureaucracy and the snooping agencies on a range of specified triggers, some of which are hold-all phrases undefined in the law and open to wide interpretation. For instance, the regulations and law say authorities have to be satisfied that the surveillance can be permitted if it is necessary or expedient in the "interest and of the sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence or for investigating any offence".

The Union government has correctly stated that these powers and provisions were put in place during the United Progressive Alliance era. The current National Democratic Alliance government has merely followed through on them. But in revealing the SOP the government has also admitted that whatever safeguards the law and regulations provided predate the Puttaswamy judgments on privacy and Aadhaar.

In India, those judgments and the Srikrishna committee were the first attempts in the internet era by both the judiciary and the political executive to limit the state and private sector's power to breach citizens' privacy. But the government contends that the legacy regulations from nearly a decade ago are adequate.

The judicial challenge presents the first opportunity to put the bureaucratic frame regulating the surveillance agencies to test against the Puttaswamy judgements and the Srikrishna committee report findings. The first unanimous judgment by a nine-judge bench affirmed the right to privacy as a fundamental right under the Constitution. It consequently raised the bar that the state would have to scale to breach citizens' privacy. The Srikrishna report assessed the checks and balances that other democratic countries imposed on states collecting data on citizens in the electronic era.

The petitioners have not challenged the state's need to snoop and the Union government has, unlike in the Aadhaar case, not denied citizens' right to privacy. But how the two countervailing essentials for a democratic state in the electronic era will be balanced in practice will emerge from the current case the Supreme Court is hearing.

THE SNOOPING PROTOCOL

- In 2011, Centre establishes a secret Standard Operating Procedure for "Interception, Handling, Use, Sharing, Copying, Storage and Destruction of Message/Telephones/ E-mails etc and Certification".
- It reveals the protocol in response to a challenge before the SC of the electronic snooping powers under the IT Act, 2000 and subordinate regulations.
- The procedure provides an elaborate but purely bureaucratic mechanism of supervision over e-surveillance.
- Petitioners before SC ask for new standards for electronic and digital surveillance.
- They note that in 2017, enforcement authorities ordered Facebook, Google and Twitter for data of more than 200,000 accounts under various laws.
- Justice Srikrishna Committee said review authorities meet once in two months and have the task of reviewing more than 15,000-18,000 surveillance orders

INSIGHT

Model code, productive use

DHIRAJ NAYYAR

ILLUSTRATION BY BINAY SINHA

The government is now closed for business, or at least serious business, until the first week of June. After the announcement of the general election dates and the enforcement of the model code of conduct, no policy decision will be made until a new government assumes office. The terribly elongated polling process, perhaps necessary to ensure free and fair elections in every part of India, means that almost a full quarter will be lost for policymaking. At a time when the economy is still facing challenges on the growth front — industrial growth was just 1.7 per cent in January — precious time will be wasted.

However, that is the reality. Unfortunately, in a country which is in the election mode every year, such frequent periods of policy pause are costly. In principle, therefore, the PM's call for simultaneous elections (or an alternative US-like system where there are two election cycles every four/five years) makes sense for an emerging economy that still needs continuous, uninterrupted policy change efforts. That said, is there a way the lull can be put to productive use? The answer is yes.

In the context of a general election, it is important to acknowledge that the actual time wasted in terms of policymaking may actually be more than three months. The fact is that the attention of the government in the quarter preceding the election announcement is usually focused on what may broadly be termed as populist measures. It is certainly not the time for challenging reforms. And often, post-election, the energies of a new government in the first three months is focused on personnel changes and planning an agenda for governance rather than on policy implementation.

It is imperative for a new government to hit the ground running especially in a scenario where growth prospects are still below full potential. Since the incumbent government strongly believes it has a very good shot at a second term, it must use the next two and half months to nudge the bureaucracy to work hard on policy blueprints so that several initiatives are ready to either be introduced in Parliament as legislation or to be announced as executive action in the month of June.

Those who are familiar with the working of the government would know that processes take inordinately long. There is, of course, the usual hierarchy of each ministry where files must pass from the lowest level to the highest level with each official adding his or her views on a proposal. Policy decisions also require consultations with other ministries that may have a stake. They require consultation with external stakeholders. In the case of legislations, they need careful drafting and vetting by the law ministry and legal officers of the government. It would be prudent to use the period of the model code of conduct to go through some of these processes on a few big ideas that the government would like to implement in its next term, rather than wait to begin in June.

At the very least, this could help build up a consensus within the bureaucracy on pending policy matters. At its best, it could enable a big bang first 100 days for the next government. There are cases where ordinances have been issued. These can be converted to legislation immediately in June. There are cases where policies have been announced, like the National Mineral Policy in the penultimate cabinet meeting of this government, but where implementation would require changes in existing legislation. The ministry concerned, the Ministry of Mines, should be ready with a draft amended legislation on June 1.

The effort would not be futile even if a different political formation assumes office. By and large, there is a policy continuum even if emphasis changes. The current NDA government took forward the goods and service tax, bankruptcy code and monetary policy framework (to name just three policies), on which work had been initiated by the previous government. Also, a new government would mean a change in personnel at the ministerial level and secretary level but most often the bulk of the bureaucracy isn't changed immediately. They can be a source of readymade policy ideas for any new government.

Political capital for economic reform is highest in the first 12 months in office for any government, whether majority or minority. It must be used better than it has been in the past. Also, for all the mini-election cycles that will occur in the next five years, the incumbent central government must be strategic about using periods when the model code of conduct is in place to go through with the processes of policymaking. The substance must come before and after.

Time is money. An economy on the fast track cannot afford to waste it.

The author is chief economist, Vedanta

LETTERS

Reduce complexity

This refers to "Infrastructure companies plan to cut lender consortium sizes" (March 13). A large consortium of lenders leads to absence of purposeful credit decision making and delayed implementation, making this collective gathering more of an informal group discussion. There is no control over credit disbursement as each lender is bound by its own policy and there is no single lender accountability. The consortium thus becomes more of a credit umbrella. This is true especially when the business levels of some consortium members are not commensurate with the quantum of their credit exposure to the corporate borrower. Consortium lending involving a large number of lenders also weakens the effect of post sanction follow-up. The absence of a prior internally vetted corporate approach among consortium members delay the making of credit commitments at consortium meetings. It also makes debt syndication more complicated and difficult to implement.

Infrastructure companies can cite delayed credit disbursements for administrative delays as the credit risk element falls on the lending institutions. On the negative side, banks prefer to have less credit exposure and hesitate to commit even in consortium lending as large established borrowers lose both corporate image and market share due to credit mismanagement. The reduction in the number of members of a consortium group is possible today as even established companies are being taken over due to erosion of their capital base, their assets being purchased and sold to induce recovery of purposeless credit. This will also help in implementing the government directives to banks to downsize consortium participants for responsible lending.

C Gopinath Nair Kochi

Don't punish the victim

This refers to "Google paid $45 mn to former staff accused of sexual assault" (March 13). That Google, ranked as one of the best employers globally, chose to reward the accused, a senior vice-president there, with a hefty sum of $45 million instead of sacking him shows why sexual harassment of women at work will continue. The approach is to hush up the matter rather than punish the guilty. So it keeps happening — Uber there and Infosys here.

Also when bigwigs are complained against in India, cases linger on for a long time — such as those involving environmentalist and former Teri executive vice-chairman RK Pachauri or influential journalist Tarun Tejpal.

In cases where the employee fights the case while in service, they face sarcasm and humiliation. In a case I know of, the victim complained against the head of her department for sexual harassment. The management reluctantly initiated an enquiry due to her persistence but the enquiry was held in Maharashtra while the victim was posted in a southern state. She had to pay several visits to the state because the enquiry was postponed for one reason or other. Unless the senior managerial personnel detach lust from power and set good examples themselves, women will find the sword of Damocles hanging over their head.

YG Chouksey Pune

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Anxiety on Bond Street

Sebi's diktat on debt market borrowing isn't enough

The Securities and Exchange Board of India (Sebi) has mandated that listed companies rated AA and above having an outstanding loan of at least ₹100 crore must borrow 25 per cent of their incremental long-term funding need from the bond market. The regulation, which is aimed at increasing the depth of the market, comes into effect from April 1. The timing could have certainly been better as the bond markets have been nervous in the second half of the current financial year, beginning with the Infrastructure Leasing & Financial Services (IL&FS) defaults, the non-banking finance companies' liquidity situation, and more recently, the Zee and Anil Ambani groups asking lenders to accept a standstill on promoters' borrowing against shares.

Sebi's regulations are in tune with the recommendations of a working group for the development of a corporate bond market. Many companies with high credit rating have already taken to the bond market to lower their borrowing costs. According to a Crisil analysis, of the 444 companies rated AA or higher, 210 have already been raising 25 per cent of their incremental borrowing through the corporate bond route. In all, ₹40,000-50,000 crore of additional corporate bond issuances are likely over the next five years to comply with the Sebi rules. This would be raised by the remaining 234 companies. For domestic institutional investors too, this move is expected to provide adequate, good quality paper to buy.

It's a given that India needs a thriving corporate bond market, but the government and the regulators should have ironed out some vexing issues before enforcing such a rule. First, companies may need more time to switch 25 per cent of their incremental borrowings to the bond market. Sebi, on its part, has provided companies flexibility in the first year to carry over the shortfall, if any, to the next year. But from the third year, the capital market regulator will charge a fine of 0.2 per cent of the shortfall in bond issues. This rule needs to be relaxed. The bond market is not as deep at present, with about 70 per cent of the fund-raising in recent years being done by non-banking finance companies. Moreover, it is only the top rated companies, which are able to raise funds easily in the market. For AA rated companies, both demand and costs are not as attractive. Raising bonds from the retail market is an option, but it comes at a higher cost both in terms of compliance and fund-raising expenses. Insurance and pension funds, which would be interested in longer tenure papers, need to be incentivised to invest in these papers. Another investor category — foreign portfolio investors — would want liquidity, which is missing as of now.

Also, if lenders were to add more AA companies in their bond portfolio, they would want credit rating agencies to be more proactive. The IL&FS debt rating is a recent memory where its papers went from top rated to junk in a matter of days, proving lack of oversight on rating agencies. Shifting a part of companies' borrowings to the debt market is a good idea, but it should not be only the corporate sector's responsibility — the government and regulators too have a role to play.

The bitter truth

Sugar sector needs reforms, not band-aids

No sector has got as many bailout packages as the sugar industry. Yet, this sector's woes fail to cease. This is evident from recurring piling-up of unpaid cane price arrears, which have again mounted to over ₹20,000 crore. Clearly, either the official interventions are misdirected or the industry is unable to make the best use of the largesse to acquire adequate resilience against economic shocks. The government also, at times, makes ill-advised and mistimed policy interventions that prove baneful for the industry. A recent example of this was the large increase in the monthly sugar release quota for March, which depressed the already low sugar prices and worsened the mills' liquidity crunch to necessitate additional financial support. The most significant official moves to facilitate payment of cane growers' dues by the industry include fixing the floor price for the sale of sugar; cash assistance as part payment of cane price; creation of sugar buffer; concessional loans to sugar mills; and indirect subsidy on sugar exports by defraying handling, internal transport and freight costs.

The latest financial package approved last week involved another tranche of a soft loan of ₹15,500 crore with an interest subvention of ₹2,600 crore. Significantly, this loan is meant primarily for setting up new ethanol manufacturing plants, including standalone distilleries, to augment the overall ethanol production capacity. The objective is to encourage the use of B-heavy molasses (which still has some extractable sugar) and sugarcane juice to make ethanol, sacrificing the main product sugar. The National Biofuel policy has already been altered to allow ethanol production straight from cane juice and payment of higher prices for such alcohol. The long-term implications of direct conversion of cane juice into alcohol are truly worrisome. It would tend to encourage larger cultivation of this water-guzzling crop which can be ecologically disastrous. India, being short of both land and water, can ill-afford to devote its prime agricultural land with assured irrigation facilities for biofuel production. The only viable options for agri-based energy production are to use leftover agricultural biomass, most of which currently go waste, or raise energy plantations on degraded and wastelands, especially in the arid and semi-arid areas, which are unfit for regular farming. But the cultivation of a crop like sugarcane, especially for this purpose, is untenable.

The lasting solution to the sugar sector's persistent troubles lies, indeed, in carrying out basic reforms leading to total deregulation and decontrol of this industry. The ways and means to undertake these reforms have been spelt out by several expert committees that have gone into this issue from time to time. The latest in this league — the committee headed by noted economist C Rangarajan — made some prudent and pragmatic suggestions in its report in 2012. These included a revenue sharing-based pricing formula to link cane prices with those of sugar. This would let the production of both sugarcane and sugar to respond effectively to market demand, thus, moderating shortages and gluts without hurting the interests of any stakeholder in this sector, be it the cane grower, sugar producer or consumer. It is indeed still not too late to implement this panel's report to enable this vital agri-based industry to stand on its own feet.

ILLUSTRATION: BINAY SINHA

An urgent reform agenda for RBI

Its policies need to evolve to take cognizance of geo-political risks and the opportunities that digitisation offers to the poor

The nature of geo-politics and the rapid advances in digitisation require the Reserve Bank of India (RBI) to urgently rethink its extant supervisory policies. The ability of powerful nations to impose crippling blows on other countries without using conventional weapons of war is not fully appreciated. Bank regulations require to adapt to this new reality as financial systems are the core to an economy's smooth functioning. The new issues that require a clear strategy include alleviating the impact of possible sanctions on local entities that are largely owned by foreign entities, data localisation, and defence against cyber-attacks by sovereign states. This is not all. It is important also to consider the implications of bank regulators choking fintech innovation and the accompanying customer welfare loss in the name of financial stability.

JANMEJAYA SINHA

The nature of geo-politics has undergone tremendous change with muscular policies on display by both the US and China. There is a clear erosion in the consensus on multi-lateralism. The two new superpowers — the US and China — are trying in their own way to shape a world that provides them advantage and a leading position to be able to impose their own standards on the rest of the world. India needs to be ready to operate in a world where global standards give way to unilateral shifts on issues that do not suit either superpower — either by revocation of multiple trade deals, the use of sanctions and extradition or a muscular and threatening approach in South China Sea or One Belt One Road (OBOR) initiatives in pursuit of domination. President Trump was openly supportive of Brexit, and is critical of the EU, as it gives the US much greater bargaining leverage to negotiate against individual European countries, rather than Europe as a block.

In this backdrop it is critical to examine the need for diversified ownership of banks. While a promoter cannot hold more than 15 per cent stake in a bank, foreign entities as a block can own 74 per cent without any concentration limit by a single country. Our largest private banks ICICI, HDFC and Axis all have majority foreign ownership. In case, say the US, imposed sanctions, what impact would it have on the capital of our banking system? We need to carefully consider whether single country actions can cripple our financial system.

Much of the discussion around data today is in respect to privacy and usage and not geo-politics. Here the RBI has acted decisively by issuing a circular in April 2018 to ensure that Indian data is stored in India to avert the risk of sanctions. The General Data Protection Regulation (GDPR) from Europe was a good wake-up call. The US is just starting to deal with the big tech companies and their indiscretions and there is always suspicion around the ability of the Chinese State to access data with its private tech companies. But India must store its data locally.

The third area that requires a coordinated defence strategy is protection against a sovereign led cyber-attack on our banking system. Stress testing should check for cyber defence as much as bank credit portfolios. It is believed that five nations have advanced capability to impose heavy damage on others through their cyber-attack capability — the US, China, Russia, Israel and Iran. It is both ironic and sad that despite all our IT capabilities we have not created a similar cyber capability. We need to think about this in the same way as nuclear deterrence.

The other key trend — digitisation and machine learning (that data now allows) — has not been explicitly encouraged. It has the potential to greatly enhance consumer welfare. Full financial inclusion will be spurred greatly by a full use of data which would over time potentially obviate the need for collateral. It is worth noting that the Bank of England has changed its bank licensing norms, and since 2013 has issued 15 new bank licences. Currently, we have a licensing regime where it is relatively easy to get a Non-Bank Finance Company (NBFC) licence, possible to get a payments bank licence or small bank licence, but next to impossible to get a full bank licence. As a result we have over 12000 NBFCs but only 25 of them have about 85 per cent of the total NBFC assets outstanding. Some are bigger than banks. NBFC licensing should spur fintech innovation, yet the collapse of IL&FS proves that the RBI should regularly convert the largest NBFCs, over a certain threshold, into banks so that they face stricter regulatory regime and their ALM mismatches do not create any systemic risk. The payments bank business proposition without lending is hardly viable and the history of small banks in India has not been good. Thus, I argue that there should be a regular conversion of large NBFCs into banks and easy entry into the financial sector as NBFCs to spur innovation. The recent RBI regulations on co-origination of assets with NBFCs is a step in the right direction to spur fintech innovation at least in priority sector. But the RBI must ease the bank licensing regime to allow challengers to spur innovation.

An allied issue that the RBI should seriously consider is the false belief that diversified ownership of banks is superior to allowing for a dominant shareholder with substantial ownership. The global financial crisis arose in a banking system with diversified ownership. A dominant shareholder may have provided sharper oversight on the bank management. I believe it is important to revisit the 15 per cent maximum limit in India to, say, 26 per cent urgently. Further simple hygiene requires a clear articulation of capital holding norms by a shareholder and how it is to be calculated.

Further, the hesitation to allow industrial houses bank licences is perplexing. Some of our best NBFCs are owned by industrial houses. It is easy to enforce restrictions on inter-group lending if there is a fear of resources being cornered by the banks for other group companies. The case to deny industrial houses a bank licence should be made on the reputation of the industrial house, based on clear criterion rather than the weak logic situated in an earlier era. The RBI would do well to review its guidelines.

RBI policies need to evolve to take cognizance of both the geo-political risks that exist in the world and the opportunities that machine learning and digitisation offer the world and most pointedly the financially excluded poor Indian.

The writer is chairman - India, Boston Consulting Group. Views are personal

When governments tag you on social media

Face recognition technology allows for remote, covert, non-consensual identification. In other words, like other forms of biometric technology, it can easily be used for mass and targeted surveillance. Internet giants such as Google, Facebook and Microsoft have large centralised databases containing photographs and video recordings of our faces. Using machine learning, they can easily identify us if one of their users were to upload an image or begin a live broadcast. As their market shares grow, and as users continue to upload pictures of their faces (including those in response to campaigns such as #10yearchallenge) their artificial intelligence models for each one of us becomes increasingly accurate.

SUNIL ABRAHAM

Once such recognition technology has been deployed at global scale, governments of all hues, democratic and authoritarian will sooner or later want to use these capabilities for legal and illegal purposes. For example, a terrorist could be identified at an airport, a criminal could be matched with CCTV footage, an intimidated victim of trafficking can be identified without her cooperation, a missing child who is too young to remember her origins can be united with her parents. Unfortunately, the very same technology can also be used to identify a labour union member on strike, a human rights activist at a demonstration, a sexual minority in a park, and a sex worker at a mall.

Even the employees of these Internet giants seem to be horrified by the potential illegal uses of facial recognition technology by governments. In October last year, 450 Amazon employees protested the licensing of the software, Rekognition, to US government and law enforcement agencies. Amazon ignored these protests and proceeded with closing those deals. Just last week, Satya Nadella of Microsoft indicated that Microsoft would follow suit. He said, "[We] made a principled decision that we're not going to withhold technology from institutions that we have elected in democracies to protect the freedoms we enjoy."

The digital human rights activists just like the nine judge bench in the Puttaswamy judgment, believe that surveillance must be "necessary and proportionate". A centralised global panopticon capable of identifying billions of humans across the planet fails this test. Therefore, from a human rights perspective, an absolute ban on the provisioning of these technologies to governments makes perfect sense. The internet giants obviously disagree. Last month, Brad Smith, Microsoft's chief legal officer, exemplified this position best when he said, "A sweeping ban on all government use clearly goes too far and risks being cruel in its humanitarian effect."

Face recognition technologies can be life altering for visually impaired persons. Imagine a visually impaired person attending a book fair or a concert. She would be able to use this technology to identify and speak to her favourite author, expert, commercial partner or friend. Therefore, the optimisation question before us is: How can we provide facial recognition technology to the visually impaired person without letting it be abused by the state. Do remember that all of us so called "able-bodied" are only temporarily able. Unless we have the double fortune of dying quickly and early we will spend a part of our life disabled and will have to depend on similar electronic accessibility technologies. And even if our bodies don't fail us, our minds will and many of us will find such recognition technology critical as we age. Another clear example is the use of recognition technology to find a missing child.

How can internet giants build face recognition technology with technical guardrails in place? Like Apple they can decide to adopt a decentralised architecture. In others words, the best way for internet giants to prevent abuse of their platforms is to make it technically impossible to do so. The face recognition software can run locally on the user's device, the artificial intelligence models and the relevant data can be stored locally on the user's device. When a visually impaired person is about to attend an event, the event organisers can provide the attendee's data after securing informed consent. When a child goes missing, the parents could share the data for their child with search parties that have volunteered to scour the neighbouring localities and states where the child is likely to be found. This decentralised architecture makes it impossible for a government to use internet giants as a global panopticons. A separation of surveillance capitalism from surveillance state.

Even with such technical guardrails there may be unintended consequences. In China, there is the phenomenon of human flesh search engines, wherein online mobs hunt down and punish citizens whose actions have enraged them. Therefore, new technical guardrails and institutional checks and balances will need to be introduced as users use and abuse such platforms.

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A bureaucrat's eye view

BOOK REVIEW

SUBHOMOY BHATTACHARJEE

You will make very little sense of the Indian economy without a clear insight into how the Indian Administrative Service (IAS) operates. Compared with the US, where the role of the civil service is restricted vis-a-vis the economy, and China, where the mandarins of Beijing direct every possible aspect of the economy, the reach of Indian officialdom is somewhere in between. What has also stumped investors and analysts is that the reach of the service has expanded, in lockstep with the expansion of the economy.

This expansion is often not understood but has often tripped up investments into the economy. Two examples from the tenures of the United Progressive Alliance (UPA) and the National Democratic Alliance (NDA) show how it works.

UPA Finance Minister Pranab Mukherjee announced retrospective taxation on overseas purchases of Indian-registered companies, that impacted Vodafone, Cairn and a good many others. It is no secret that it was not Mr Mukherjee but the revenue secretary, R S Gujral, who had spearheaded the tax. The other is the more recent rules for e-commerce. Although few NDA ministers have made any pronouncements on it, the details have been dished out by the officers of Udyog Bhawan (office of the department of industrial policy and promotion), to create new challenges for Amazon and Walmart's investments in India.

In short, the IAS matters. It matters, even as a political force; it matters even in the operations of the other central services. Few important constitutional positions were outside the ambit of the IAS till recently. To the ranks of the Comptroller and Auditor General, the Chief Election Commissioner and the Central Information Commission, one could soon add the Lokpal. Few regulators remain untested by this service.

Yet when one reads *The Steel Frame: A history of the IAS* by former Union Public Service Commission (UPSC) chairman Deepak Gupta few of these perspectives emerge. Mr Gupta has taken pains to collect details from the era of the Indian Civil Service, the precursor established by the British. Almost 100 pages of his 282-page book comprise a recital from those times. There is even a subsequent chapter on the "character and traditions of the ICS and IAS". And another one on the idyllic life of district magistrates during the British era. "The new districts have much smaller houses and gardens. In the compounds of older districts additional houses have been built...The paraphernalia of the Raj has gone away and the DO's (district officer) personal life, one could say, has been democratised". How relevant is this in 2019?

The book consequently loses track soon. It plods through the familiar terrain but nowhere does the author describe any personal evidence of how he handled some of those concerns as secretary in the ministries at the centre or recount any first-hand narrative. He relies only on reports by several commissions and quotes other books to make his point. For instance, he makes a valid case that care has to be taken in selecting who among young IAS officers are posted as collectors of a district. Then he only adds: "it is really important that the collector be selected very carefully. Some even say that the fact of the collector being so selected should become a conscious recognition of his overall worth. Unfortunately sending trainees to the districts has become a routine exercise. I would think that the director of the academy take up through telephonic discussions with the chief secretary, the selection of collectors".

Nowhere does he look upon the role of politicians with approval. Yet in a democracy, it is the politicians who are responsible to the people. The IAS or any other of the 45-odd central services are only there to ensure this responsibility is served well. Since independence, successive political parties in the states and at the Centre have to their credit improved the well-being of the ordinary Indian, creating a welcome surge in aspirations. Admittedly, there are plenty of white spaces still to cover. At the other end is an entrepreneurial India chafing at regulations that are often slow to keep pace. The IAS has to be judged on how well it has kept pace with the challenges. Mr Gupta refers to policies gone wrong and right, but offers little insights except to say that those "where the political executive has a clear and genuinely held policy view, the civil servant usually does deliver". Whose role is it to develop such clarity?

Such questions are all the more surprising since he has been the chairman of the UPSC where many of these debates should have occupied centre-stage. As a constitutional body, it had the space to do so. But one scarcely recalls any major open discussions that have been organised under its rubric, under him or before, to discuss these issues. Instead, Mr Gupta expends another large segment of the narrative to challenge the supposed erosion in the primacy of the UPSC principally over the demands for lateral entry into the service and a proposal by the department of personnel and training to allocate services to candidates not at the point of recruitment but after their post-induction foundation courses. For any ill, he dives into the past for guidance rather than offer a new set of options. This is where the book fails.

THE STEEL FRAME: A history of the IAS
Deepak Gupta,
Roli Books, ₹695, Pages 282