

The Tower of legal Babel

The project to translate judgments to national languages will face many snags



OUT OF COURT
M J ANTONY

It is said about literary works that translations are the other side of the carpet. They lose much of the beauty. But when a court judgment in English is translated into national languages the result could be a nightmare like the Tower of Babel. In an age-old nation like ours which had only a

recent contact with western jurisprudence translations could face formidable hurdles. The judiciary has launched an ambitious programme to make available judgments of the Supreme Court and high courts in local languages. Important judgments run into hundreds of pages like the celebrated Kesavananda Bharati, judges’ appointments cases, and recently, the right to privacy judgment. They are no easy read, with footnotes and references at the bottom of the page. The hangover of the Anglo-Saxon tradition leads to a sprinkling of Latin and French phrases, apart from US and Commonwealth case law. Moreover, several judges tend to be loquacious and have been criticised for that. Late V R Krishna Iyer consistently rode a polysyllabic mare to tilt at windmills of social injustice in his classic judgments. Several others also use exot-

ic words and syntax. Recently, Chief Justice Ranjan Gogoi is reported to have conceived a project to provide short summaries of important judgments, but it has not taken off. The judiciary is not digitally savvy, though it claimed recently that it is going paperless. In fact, it has just taken over 12 acres of the former Appu Ghar nearby to store its papers. It is not yet equipped to use computers for translation. Even if AI is used, robots would be foxed by judges’ language. There is an apocryphal story in which CIA engaged computers to translate Russian. When it came to the biblical sentence, “spirit is willing; but flesh is weak”, the printout read: Vodka is good; but the meat is awful. So a large number of specially trained translators have to be employed. There are endless wrangles in courts, reflected in judgments, over the

use of simple words like “shall” and “may”. After long and intricate discussions, shall in a statute is sometimes “read down” as may and on other occasions, may is “read up” to mean shall. Law journals have a separate section on the latest interpretation given by courts to ordinary phrases. Judgments are only part of the problem. Legal draftsmen have often founded judges with woolly phrases. Some jurists think that half the litigation in the writ courts is the consequence of bad draftsmanship. When judgments are written, those provisions running into several pages are cited fully. This would make the task of the translators doubly difficult. Last week, a Jharkhand liquor law provision in Hindi had to be translated twice into English to satisfy SC judges regarding its accuracy. The sections were named in hybrid language, like “Rule 106(Tha)”. The problem would be compounded if all these have to be translated into 23 scheduled languages of the Constitution, including Bodo, Santali and Sanskrit. The SC has often criticised lawmakers for not correcting errors — even typos — despite pointing them out.

Judges have to iron out clumsy clauses in law. On four provisions in the Excise Act, the court wrote, “subjected to amendments from time to time, they have now become so complicated that in order to discern their meaning, it becomes necessary to read them back and forth several times”. In a similar situation, a British judge remarked that he tried holding the lines upside down too, with no result. If judges say so, what would a lesser translator do? The legal profession treats words of statutes and judgments like religious texts. With several translations, they would argue over comparative translations till their jaws ache and pockets runneth over. It is well to remember the old adage that hell is paved with good intentions. The translation move may be politically correct, but the immediate need is to provide ordinary people a simple summary of judgments, as Gogoi planned. In the 1,000-page Kesavananda judgment, the judges themselves felt the need to provide a summary. But that summary itself ran into controversy because it is argued that the “basic structure theory” came out of the summary, not from the judgment. Quicksands abound in the legal field.

CHINESE WHISPERS

Swaraj on political violence



Former external affairs minister Sushma Swaraj (*pictured*) has retired from active politics. Her well-wishers and supporters expected the government to make her governor of a state. While Swaraj is yet to be sent to a Raj Bhavan, she has decided to highlight the issue of “political violence in Bengal”. On Thursday, Swaraj will be the chief guest at such an event the India Foundation, a Bharatiya Janata Party-affiliated think tank, is organising. The organisers have said more than 50 families “whose members have been victims of political violence in Bengal and all those survivors of family victims will narrate their stories of sorrow and horror”. The group is planning to prepare a report on this and present it to Home Minister Amit Shah.

Star performer Tewari



UPA Chairperson Sonia Gandhi on Tuesday came prepared to take on the government on US President Donald Trump’s remarks on Kashmir. During the Zero Hour, as Manish Tewari (*pictured*), who was leading the Congress’ charge on the issue, targeted the government, Gandhi pulled out a sheaf of papers from a plastic folder and handed those to Tewari, who started reading out from the transcript of Trump’s remarks on Kashmir. He returned the papers after completing his intervention. Tewari had been passed over and Adhir Ranjan Chowdhury was chosen leader of the Congress in the Lok Sabha. But during the ongoing session, Tewari has been one of the star performers for the party.

The ascent of dissent

Financial sector committee reports have become as famous for dissent notes as their recommendations

SUBHOMOY BHATTACHARJEE

According to media reports, Finance Secretary Subhash Chandra Garg will be putting up a dissent note in the report by the Bimal Jalan committee reviewing the capital framework of the Reserve Bank of India (RBI). One key recommendation will be how much of the central bank’s reserves should be transferred to the government. Garg has apparently suggested a one-time lump sum transfer. Garg is not the first to put in a dissent note in a financial sector report. In fact, it is rare to find any committee report for the financial sector since 2000 in which there hasn’t been a dissent note by at least one member. If he does so, however, he would be the first finance secretary to have put in a dissent note so far in the 20-odd reports commissioned for the sector. The most famous dissent was the “High Powered Expert Committee on Making Mumbai an International Financial Centre” report of 2007. It was colloquially known by the name of its chairman, Percy Mistry, who made his dissent known by declining to sign the final report. The Percy Mistry report was signed by the other 14 members; predictably, Mistry’s absence made the news — and Mumbai never made the transition to an international financial centre. In 2006, economist Surjit Bhalla

put in a dissent note as member of the second SS Tarapore committee report on capital account convertibility. This was known as the committee on “fuller” capital account convertibility, since there was an earlier report on the same theme by the committee in 1997. The earlier one did not have a dissent note. Some recommendations from both these committees became part of the policy framework. The maximum number of members to put in a dissent note was the Financial Sector Legislative Reforms Commission chaired by Justice Srikrishna to streamline and update sectoral laws. Of the eight members who wrote the report in 2013, four also penned dissent notes. Discussions on the report are peppered with these dissent notes, especially the one by P J Nayak. As former joint secretary, capital markets, and former chairman of Axis Bank, Nayak’s words of caution about transferring power from the RBI to the finance ministry effectively killed the report. One key proposal became the Financial Resolution and Deposit Insurance (FRDI) Bill, 2017, but the uproar over a clause diluting depositors’ rights put it on the back burner. Nayak himself was lucky as the report he chaired in 2014 as the “Committee to Review Governance of Boards of Banks” had no dissent notes. No wonder its prescription for bank governance in India has become the standard reforms template since.

There is a pattern to these dissent notes. Most of them have been about reconciling differences between the RBI and the finance ministry, the underlying issue being which institution will be asked to cede power. Committees were expected to narrow the differences. In most cases, that never happened, so the tensions persist with varying intensity. For instance, in 2018, the finance secretary chaired an Inter-Ministerial Committee for Finalisation of Amendments to the Payment and Settlement Act. The committee had seven members, of whom the RBI representative, S Ganesh Kumar, executive director, had put in a dissent note. At stake was who will get to police the emerging fintech sector. No surprise, then, the practice has spread to other entities in the financial sector. Economist Abhijit Sen as member of the 14th Finance Commission had put in a dissent note. The commission was chaired by Y V Reddy. Sen criticised the sharp bump in the allocation to states from the divisible pool. Sen was the first member of a Finance Commission member to write a dissent note. Essentially, every chair of a committee on the financial sector has had to wrestle with dissents. The N K Singh-led committee review of the Fiscal Responsibility and Budget Management Act got its share from then Chief Economic Advisor Arvind Subramanian in 2017. Raghuram Rajan chaired two reports for the Planning Commission, one of them after he was appointed chief economic advisor. The one on

DIFFERING OPINION

Name of committee	Chairman	Dissent notes	Year of submission
Fuller capital account convertibility	SS Tarapore	Surjit Bhalla	2006
Mumbai IFSC	Percy Mistry*	Percy Mistry	2007
FSLRC	Justice Srikrishna	PJ Nayak, JR Verma, KJ Uddeshi, YH Malegam	2013
Committee for evolving a composite development index of states	Raghuram Rajan	Shaibal Gupta	2013
14 th Finance Commission	YV Reddy	Abhijit Sen	2014
Committee on Comprehensive Financial Services for Small Businesses and Low Income Households**	Nachiket Mor	Shikha Sharma, SS Mundra	2014
FRBM Review Committee	NK Singh	Arvind Subramanian	2017
Inter-Ministerial Committee for finalisation of Amendments to the Payment and Settlement Ac	Subhash C Garg	S Ganesh Kumar	2018

*resigned from the committee in February 2007; **additional notes to the committee

financial sector reforms, which he chaired before joining the government, went through peacefully, but the “committee for evolving a composite development index of states” which submitted its report in 2013, found itself saddled with a dissent note from Shaibal Gupta of Asian Development Research Institute. Gupta opposed the method crafted by the committee to decide if a state could get special status. This, too, got more salience than the report, which was quietly buried. The Seventh Pay Commission with just three members has notched up a record for the largest number of dissent notes — well over 60. They differed on treatment of defence services, whether IAS entrants should hold an “edge” over other services on number

of years, on pay within the central services on promotion prospects, on lateral entry and much more. There were so many that it is often difficult to make out if there is a considered view for the government to adopt or simply a recital of the dissenting views. Even when there was no dissent on record, such as the Bimal Jalan committee for “Review of Ownership and Governance of Market Infrastructure Institutions”, reports created news for having glossed over dissensions. That report submitted in 2010 set up a furious debate between the stock exchanges with both the finance ministry and the Securities and Exchange Board of India eventually distancing themselves from the conclusion. Jalan, too, finally distanced himself from the report.

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For an accident-free India

Rashtriya Loktantrik Party leader Hanuman Beniwal, an ally of the Bharatiya Janata Party in Rajasthan, on Tuesday said in the Lok Sabha that one of the reasons for the growing number of road accidents was India’s rising population. He suggested those with more than three children should not be allowed to contest Lok Sabha and state assembly elections. Speaking on the Bill to amend the Motor Vehicle Act, Beniwal said India should follow a three-children policy, if not the two-children policy followed by neighbour China. The reason that Beniwal said a three-children policy was good enough, sources said, was because having three children was still quite the norm in Rajasthan, and several of his politician colleagues have three children.

INSIGHT

Bring out the Big Tent

Hong Kong seems transfixed with the symptoms, not the cure



VIJAY VERGHESE

Hong Kong is adrift in uncharted waters. The uncommon tear-gas tango being played out on the city’s streets poignantly shows it has been a fast and brutal slide from the high life to high dudgeon. As with the 2014 “Occupy”, a mass seemingly disciplined movement has dribbled into a meandering leaderless display of angst with no clear long-term aim. Small fringe groups repeatedly break off from peaceful marches like malign free radicals roaming the city’s financial arteries seeking futile confrontation. The government has curiously all but abdicated the stage creating an even bigger leadership vacuum. And a once professional police force, maligned and under pressure, stands by as violent hooligans beat black-shirted protestors as well as casual commuters in an MTR station. This holds dangerous portents. Politics abhors a vacuum and Beijing is increasingly uneasy as symbols of its authority come under attack. With protesters fleeing to Taiwan, purportedly for asylum, events have spilled into the regional arena adding pressure on cross-strait tensions. It is time for the government to reach out across the divide to fashion a bridge — seeking help from universities, politi-

cians of all hues, Christian leaders, labour heads and business stalwarts, and anyone who may be in a position to help. This is not a time for bruised egos, face, shows of state power, petulance, or PR spin. It is a time for big-tent action across a table — no matter how acrimonious — with transparency, and with the media present. Bringing these disparate views into a single room means certain ground rules must be clearly understood and firmly enforced. Hong Kong’s “rule of law” must be upheld at all costs. This is the glue that binds the fabric of this complex territory. The Basic Law, Hong Kong’s mini constitution that emerged from white-knuckle Sino-British talks and received a tacit nod from major powers, must be adhered to. Protestors who have broken the law and vandalised public buildings like the Legislative Council (regardless of whether they were lured in as a part of government strategy to erode public support) must face their charges in a court of law. No country takes an attack on its seat of power lightly. The students are right to protest a hastily devised extradition bill but terribly wrong to cross the line when it comes to violence. To argue the damage is an aberration by a small faction is immaterial now. The entire movement has been tarred by that brush, in one fell swoop killing business, tourism receipts, and goodwill. Fleeing to Taiwan is not an option. A government in exile — something deracinated dissidents often fancy over time though not as yet in this case — would be an incendiary notion. They must face the music at home. Civil disobedience as espoused by the likes of Mahatma Gandhi or a Martin Luther King entailed long stints in prison where moral authority was incubated. They



Men in white T-shirts and carrying poles, seen in Yuen Long after attacking anti-extradition bill demonstrators at a train station in Hong Kong

were non-violent. But they broke what they deemed were restrictive and egregious laws. They knew their actions had consequences. They didn’t slip away to Bermuda for a martini. The government for its part must stop dancing around the issues with semantics. It has impressed none and frustrated all. If the extradition bill is truly dead, then the chief executive must take it off the table. There can be no ambiguity. The police must end their petulant behaviour and get back to serving and protecting, as they have done in a clean and exemplary fashion since the Independent Commission Against Corruption (ICAC) was instituted in 1974 to excise graft from the ranks. An independent commission of enquiry would be welcomed to identify erring officers and put paid to idle scutletbutt. The morale of those in uniform must be rebuilt. A fundamental problem with the sudden politicisation of Hong Kong — an avowedly apolitical financial entrepôt until 1997 — is the lack of precedent and history or any markers to chart progress. Just as viewers often mimic relationships on TV (Friends was one striking example), politics in the ter-

ritory has been largely copied and has a naïve romantic neo-convert tinge to it. That image may be losing its lustre and is part of the frustration as students realise that a crowd, however well intentioned, cannot simply dictate terms. There is rule of law. There are courts. There is procedure. That’s where the battle must be joined if the city is to protect its fine institutions and future well-being. Romantic struggle requires a Great Evil to oppose in order to stir young hearts. And thus the good-vs-evil battle plays out weekly on Hong Kong streets shrouded in tear gas. It is street theatre at its most moving — both intriguing and worrisome, given its unpredictable nature and the absence of a coherent plot. Hong Kong’s embattled Chief Executive Carrie Lam Cheng Yuet-ngor has been pilloried as a stooge and a monster. She is neither. But an obdurate manner, government hubris, and a tin ear have not helped. Lam would do well to resign after a face-saving cooling down period (which also limits the damage to Beijing) much like former CE Tung Chee-hwa in March 2005 for “health” reasons. There is a precedent for retreat. But any cooling down period will require some government heads to roll right away. The police chief and the secretary for justice are prime candidates. It will help bring cooler heads to the table to revisit grievances and offer reassurance. That is the price of peace. Any other alternative is too grim to contemplate. While the process of selecting a new CE may open a fresh can of worms for some parties given the current swing away from China-sympathetic politicians, it represents the fresh start this city sorely needs. Dealing with the “free radicals” on the streets and student suicides — both symptoms of a deeper malaise — means identifying and tackling the problems head on. This is not a law and order issue even if it manifests as one. It is time to grasp the nettle.

The author is a Hong Kong-based journalist and the Editor of AsianConversations.com and SmartTravelAsia.com

LETTERS

Plan now

This refers to “The agony and the urgency of water” (July 23). The article is well timed as some of the states in India are reeling under severe water crisis. Vidarbha in Maharashtra is one such region. The suggestions for conservation of water through various measures are well taken. The need of the hour is issuance of government advisories and campaigning in public media for the efficient use of water. Rainwater harvesting in every building and hotel in the city should be compulsory and reuse of waste water through recycling by modern techniques should be undertaken. We must be prepared to tackle global warming. If we plan now, we may achieve the goal of reducing demand for water through efficient conservation in a very short time span. **Partha Sarathi Mukhopadhyay** Nagpur

One-sided match

This refers to your article “Red flags on green targets” (July 23). India should not commit itself to any enhancement in its targeted share at the climate change summit despite having the capacity to do so as its internal efforts aren’t adequate. Afforestation cannot be an immediate measure or solution and will only be a long-term strategy to reduce emission in the wake of mass deforestation over a period of time. Official commit-

ments before international forums have to be made with caution as the European Union and the United States have a hidden economic and political agenda to dilute and gradually do away with their share in climate change by passing the burden on to developing countries like India and China. They have also not committed in extending technological and financial support to reduce costs. This is against equity and fair sharing. Further, when covertness does not succeed, they resort to political threats like pulling out of agreements entered into earlier. This applies all the more to the US. The United Nations is also attempting silent coercion by stating that countries should come prepared with enhanced targets at the United Nations Climate Change Summit in September 2019. It is obvious that such threats are being directed towards the developing countries like India and China. Commitments made before an international forum will lead to an internal economic pressure increasing costs for such conversion, hurting the industry, especially the power segment, transport and housing amidst an abrupt change in technology. It will upset productivity and create inflation. **C Gopinath Nair** Kochi

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Boris and Brexit

His election amplifies the confusion

The only certainty about Boris Johnson's election as British Prime Minister is that trade and business can expect more uncertainty as far as the process to leave the European Union (EU) is concerned. Mr Johnson has revelled in his maverick image in various public positions he has held, from mayor of London to foreign secretary. But as he takes charge at Downing Street on Wednesday, he may find himself up against challenges of far greater consequence than a dodgy project award or an argument with Italians over Prosecco sales. Unlike the embattled Theresa May, Mr Johnson has showed his hand. He campaigned hard for "Leave". He wants a "hard Brexit" (meaning the UK would leave the EU, single market and customs union) and, failing that, crashing out with "no-deal". The stances may be clear, but the implications of these positions on business are not.

His predecessor's thrice-defeated Brexit deal, which saw the deadline postponed twice, underlined the polarisation of Parliament and the electorate. In his acceptance speech, Mr Johnson said he would "get Brexit done by October 31" with a "new spirit of can-do". But he takes charge of a government that is largely hostile to his swashbuckling Brexititeering. Two members of the government have already resigned and several key Cabinet ministers, including Chancellor of the Exchequer Philip Hammond, were threatening to resign if he were elected. By-elections next week could reduce the Conservatives' slender seven-seat majority in the House of Commons to just two, making it difficult for him to gain support for any Brexit deal he may negotiate before the new October 31 deadline. Also, Parliament has given Mr Johnson less of a free hand, voting, first, against a "no-deal" withdrawal and then voting against Parliament being prorogued to push through such a deal.

Mr Johnson now has a little over 90 days to negotiate an alternative deal. The core of the problem that brought down Ms May remains: How to deal with the border between the Republic of Ireland, a EU member, and the UK's Northern Ireland. The issue is complicated by the fact that the Conservatives depend for their Parliamentary majority on an Irish unionist party, which does not want any exceptions for Northern Ireland in this deal. Ms May's deal sought to address this with a "backstop", which would entail the whole of the UK remaining within the EU for the duration of the discussions over the new relationship but without any say in any rule changes. Predictably, this projected indefinite diminution of the UK's negotiating position — which was the proximate reason for Brexit in the first place — attracted opprobrium across party lines. Within the Conservative party, the "backstop" clauses heightened demands for the exit of Ms May, and Mr Johnson was at the forefront of those calls. Confusingly, however, he had voted for Ms May's discredited deal in its third vote. With the UK economy expanding at its slowest pace since 2012, the chaos of "no deal" is the last thing it needs.

Don't tread on Sebi

The market regulator needs financial autonomy

The Securities and Exchange Board of India (Sebi) has asked the finance ministry to reconsider aspects of the Union Budget for 2019-20 that seek to amend its governing legislation, the SEBI Act of 1992. The Finance Bill has made some major changes to requirements on the market regulator. For example, the proposed amendments suggest that three quarters of the surplus retained by the market regulator every year be handed over to the government. The remainder should go into a "reserve fund" — but that, too will be capped. The level set by the government is two years' expenditure. This is not all that the government proposes. The amendments also would require Sebi to seek the approval of the government for any capital expenditure. Put these together, and an unfortunate pattern of reduction of a well-functioning regulator's independence and powers becomes apparent.

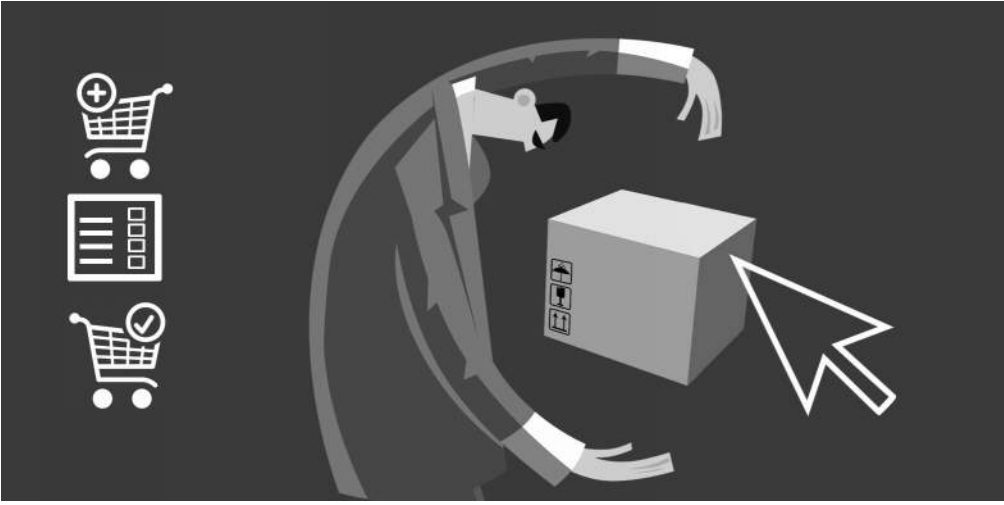
While the government may reasonably argue why a market regulator should sit on any pool of capital at all — and the Comptroller and Auditor General feels this undermines the parliamentary oversight of public funds — there are significant moral hazard questions that arise as a consequence of these proposed amendments. The sums involved are not enormous. Unlike the Reserve Bank of India, which earns a considerable income from its regular operations, in 2016-17, Sebi earned just over ₹200 crore from investment income; the remainder, just over ₹500 crore, came from its regulatory actions. Sebi's general reserve is estimated at ₹3,800 crore in March 2019.

So the amount of funds the government is likely to receive from Sebi will hardly make much of a difference to the government's kitty, giving rise to concerns that the latest move is a desire to increase control over the regulator. The Sebi chairman is right in arguing that the proposal is already being discussed by the Financial Stability and Development Council, and that the amendment to the Sebi Act, through the Finance Bill, could have waited for the Council's final decision.

The Sebi employees' association has written to the prime minister, pointing out that transferring the regulator's surplus automatically to the Consolidated Fund of India is tantamount to regulatory action becoming "a kind of additional tax on market participants". This is broadly correct. The letter goes on to warn that "perverse incentives" would be created. Governments always want to raise revenue, while Sebi has broader concerns such as market stability. A moral hazard problem would be created, in which these two incentives would clash.

The control of capital expenditure is similarly troubling. It should be up to the regulator to decide if its duties require additional capital expenditure, through discussions of its duly constituted board. The fact is that if Sebi feels it is earning too much through fees on market participants, its current mandate would mean that it would reduce its fees to broaden the market. If it requires updated facilities and more staff to monitor increasingly complex financial markets, then the decision on this matter should be taken by the regulator with the consent of the board, not by the finance ministry. This is fundamental to what regulatory independence means. The government should rethink its insistence, especially as the stability and regulation of the Indian markets are very much in the broader national interest.

ILLUSTRATION: BINAY SINHA



Au revoir, brands?

The current focus on data to measure marketing success could herald the end of an era — or the beginning of a hype cycle

Ignore the academic pride and posturing of the past. Forget the linguistic arguments... data rule[s] the day....Data science is...the new look of marketing".

I rubbed my eyes in disbelief when I saw the affiliation of the author of this: Northwestern University. This was the university that was home to Professor Philip Kotler who conceptualised the idea of "brand marketing" and whose 1967 book, *Marketing Management: Analysis, Planning, and Control*, is even today, 52 years later, a staple textbook in every business school in the world.

The sentence that I quoted was from the preface of the book, *Marketing Data Science*, by Thomas Miller, also of Northwestern University. This book, unlike Professor Kotler's classic, is full of computer-based models and the use of the computer programming languages R and Python to build models in marketing.

If what Professor Miller says is true, there is an impending wasteland where we will see the carcasses of some currently high-flying and prosperous organisations (market research companies, advertising agencies, public relations firms...), job positions (product managers, marketing managers) not to mention all of the media industry (print, television, radio...) whose life-blood is advertising money spent to create and sustain "brands". Collateral damage will affect not just Bollywood stars but also cricket, soccer and tennis, whose players are rewarded handsomely by the brands they endorse.

All these lucrative industries were built on the firm belief that there is an intangible element to every product or service beyond its physical attributes — or even its price — and that intangible

element was captured in the concept of "brand". This "brand" has its components as well: The "brand name", which was supposed to be unique and catchy, a "tagline", a string of four or five words that conveyed the most crucial aspects of what it stood for ("Just Do It", by Nike is an example), creatively designed elements (the log design, the typography used, the colour palette). All of these were supposed to combine and represent the "brand".

Early successes in using these concepts were seen in the United States with, for example, De Beers' 1947 "Diamonds are Forever" campaign that made diamonds an expression of love among common people and not just an extravagant purchase by the very wealthy; the 1954 Marlboro Man campaign made Marlboro the smoke of choice for "cool, rugged men everywhere", not to mention the myriad campaigns advertising soap brands from Colgate Palmolive, Unilever and others. These soap advertising campaigns were such a dominant force in the 1950s that even the radio and TV programmes that they ran on were dubbed "soap operas".

It is useful to trace back the economic and technological forces that led to this outburst of brand advertising because that may help us understand the current movement against brands. The early part of the 20th century saw, thanks to breakthroughs in chemical technology, the arrival of mass produced chemical-based items like soaps, detergents, cigarettes, breakfast cereals and so on that were hitherto the work of small neighbourhood craft shops. These large scale producers, particularly in the United States, needed a way to present their commoditised products as different from that of



AJIT BALAKRISHNAN

No light at the end of the tunnel?

Former Reserve Bank of India Governor Urjit Patel's talk on India's banking sector at Stanford University last June has not received the attention it deserves. Patel sees no light at the end of a long tunnel. His diagnosis is debatable and his pessimism seems overdone.

Three points emerge from Patel's talk. One, the present non-performing asset (NPA) crisis largely stems from regulatory failures and public ownership of banks. (Patel believes the two are linked). Two, Raghuram Rajan and Patel made a valiant attempt to rectify the failures of the past by tightening regulation during their tenures. Three, there are indications once again of a lurch towards lax regulation and, therefore, Indian banking will continue to be bedevilled by concerns about stability.

The significant regulatory failure, according to Patel, was allowing a credit boom to happen by relaxing norms for company, group and non-banking financial company (NBFC) exposure. There is some merit in this contention, although it's not obvious that growth of 20 per cent in non-food credit in 2007-12 was excessive. India's credit boom may seem a case of bad business judgement today. However, neither businessmen nor bankers nor the regulator could have anticipated the global financial crisis of 2007 that derailed major projects set in motion earlier.

Public sector banks (PSBs) account for most of the NPAs. Since government spending is constrained by the fisc, it uses PSBs to pump-prime the economy or boost preferred sectors. Over time, this results in higher NPAs and capital infusion into PSBs by the government. Bank lending to infrastructure and related sectors was thus a form of deferred government spending. One wonders whether that is as terrible

as it sounds. Massive PSB lending to infrastructure has eased a long-standing constraint on economic growth. Hasn't China done likewise for long — and quite successfully thus far?

After 2014 (when Rajan was governor and Patel deputy governor), the RBI significantly tightened regulation. The RBI's Asset Quality Review resulted in vastly improved recognition of the NPA problem — witness the three-fold increase in NPAs at PSBs. Better recognition of NPAs was certainly needed. Talk to bankers, however, and they will tell you that recognition was carried too far. It seriously eroded banks' capital and undermined their ability to lend. This hurt economic growth and thereby banks' ability to manage the NPA problem. The RBI overlooked the fact that growth, not NPA resolution, is the best way out of an NPA crisis.

Patel says that the RBI's February 2018 circular removed banks' discretion in dealing with defaults. There was a clear message to bankers: No more extend and pretend. The RBI placed 11 PSBs under the Prompt Corrective Action (PCA) framework that placed restrictions on their lending. Alas, says Patel, much of the good work has since been undone. The February 12 circular was struck down.

The former governor may have spoken too soon. Within days of him giving his talk, the RBI issued a revised circular on NPA resolution to replace the February 2018 circular. The new circular provides a time-frame for resolution that is more realistic. It does away with the draconian principle of declaring even a single day's failure to make repayment as default. It



FINGER ON THE PULSE

T T RAM MOHAN

tleman who was a world champion of "racquets", a forerunner of squash, and was in London in 1911 to defend his title. The cricket team found time to visit the bouts of nine Punjabi Muslim *pehelwans*, or wrestlers, including disciples of the famous Gama Baksh.

Professor Kodi Ramamurti Naidu, dubbed the "Indian Hercules" and known for his "astonishing displays of strength and endurance", was another Indian who drew crowds in England, and had become a "totemic figure among nationalists eager to promote indigenous forms of physical culture."

As the cricket team spent time in England in 1911, the flagbearers of nationalism was Mohun Bagan football club that defeated the East Yorkshire Regiment in an IFA Shield match thousands of miles away.

The author has followed Ashis Nandy and Ramachandra Guha to delve into the history of popularity of cricket in India and its larger influence. The title of the book is borrowed from English poet Edmund Blunden's 1944 book, where he "reaffirmed the deeply entrenched view that cricket was truly authentic when it

was inviolately English".

As the author points out, Blunden's book had no subtitle since there could only be one Cricket Country. Mr Kidambi's work reverberates with what Mr Nandy in 1989 wrote in *The Tao of Cricket* that cricket is an Indian game accidentally discovered by the English. Subsequently, Mr Guha in *A Corner of a Foreign Field: The Indian History of a British Sport*, seemed to celebrate the popularity of cricket as a victory of the idea of Nehruvian India.

Mr Guha argued that cricket's popularity had proved socialist leader Ram Manohar Lohia and Rashtriya Swayamsevak Sangh's MS Golwalkar wrong. Both considered the sport a sign of British imperialism and implored people to play indigenous sports like *kabaddi* instead. While cricket remains popular, the construct of a Nehruvian India never permeated mass consciousness.

Prime Minister Narendra Modi has resurrected a combination of Lohia and Golwalkar in politics. He is yet to question the frenzy around cricket but on occasion implored in his Mann Ki Baat broadcasts (of May 27, 2018) for people to play and preserve traditional Indian sports like *pitthoo*,

their competitors. Their willingness to spend large amounts on advertising synergistically led to the sudden emergence and growth of, first, mass circulation periodicals, followed by advertising supported radio and then television. Concepts like "brand equity" started circulating and by the 1960s, advertising agencies came into being to provide such services.

It is in this context that Kotler articulated the concept of "marketing" as a field of learning and postulated that the "brand" is as crucial a variable as price in influencing demand.

There is a possibility that thinking, like Professor Miller's, and debunking concepts like "brand image" and "brand" is merely an example of the kind of overstatement that new technology approaches tend to make. The consulting firm, Gartner, even has a theory around this, that they call the "hype cycle". The start of a hype cycle is when a technology breakthrough happens, but usable products that are commercially viable have yet to happen. However, early publicity soon creates a "Peak of Inflated Expectations". Soon it is discovered that there are scores of failures and only a few successes, which then results in the next phase, the "Trough of Disillusionment". Many producers drop out while a few courageous ones hang in there and try and prove themselves to the few early adopters. Then comes the "Slope of Enlightenment", a long, multi-year (often multi-decade) period where products that really deliver on — or near — the original promise appear. Finally, comes the "Plateau of Productivity" where mainstream adoption of the new technology happens.

The current rush towards emphasising the measurable outcomes of marketing like clicks, form-fills, add-to-carts, orders, orders accepted and paid for with no returns is dramatically different from long-established measures of media effectiveness such as what percentage of a product's potential audience has become "aware" or have the mode to becoming "interested" or have graduated to "desire" the product or have resulted in "action".

On the face of it, it represents progress since it measures ultimate outcomes. But, by skipping the measurement of the earlier stages through which a sales process works, are we taking the online advertising technology to the dangerous stage of the hype cycle, the "Trough of Disillusionment"? A sense of realistic expectations will dawn when the same sophisticated machine learning models that attempt to predict clicks and orders are engaged to model earlier stage variables such as awareness, interest and desire. So, a great deal of mathematical innovation lies ahead of us.

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affords some discretion to bankers and provides incentives for resolution. The RBI has asserted its power to give directions to banks on NPA resolution.

As for the PCA, it can only be a temporary measure. If extended for long and to a large number of banks, it ends up hurting banks as well as borrowers. The relaxation of the PCA framework was especially necessary given that the NBFC sector had moved into distress.

Patel concludes on a grim note. We are confronted with a trilemma in banking. It's not possible to have all of three things: Dominance of PSBs, independent regulation and adherence to debt-to-GDP targets. Something has to give.

We need clarity on the independence of the bank regulator. Is there any legal impediment to the RBI implementing "fit and proper" criteria for government-appointed directors on the boards of PSBs? Or imposing fines on PSBs that do not fill vacancies in top management or the board for long spells? Or specifying a minimum compensation for independent directors on bank boards? Independence is not given on a platter, it often has to be wrestled.

If indeed regulation can't be effective, reducing the dominance of PSBs is one answer to the problem. This is already happening. The share of PSBs in banking assets is down to 66 per cent and it should be down to 50 per cent in a few years. Do we need to accelerate the process through selective privatisation? Patel does not say so explicitly. He only asks that the government assess whether its return on equity at PSBs is adequate.

It's not all gloom and doom in Indian banking. The RBI's Large Exposure Framework is a big leap forward in managing risk. As Patel concedes, there is improvement in the assessment of loans. The process of appointment of chairmen and managing directors at PSBs is more rigorous than before. Fifty years after bank nationalisation, it would be unfortunate if we were to substantially abandon the public sector model precisely when the signs are promising.

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An imported obsession



BOOK REVIEW

ARCHIS MOHAN

This book "charts how the idea of India took shape" on the manicured cricket pitches of Mumbai long before the country gained independence, and not so much on the muddy football *maidans* of Kolkata or the uneven hockey fields of Lahore and Amritsar.

Incidentally, undivided Bengal and Punjab were provinces that sent the most freedom fighters to the Cellular Jail in the Andaman and Nicobar Islands. Hockey and football were by far the more popular sports among the masses in northern and eastern regions of both

undivided and independent India.

Cricket caught the popular imagination later, mostly after India's 1983 World Cup win. India's famous cricket team that defeated West Indies and England in 1971 had little representation from eastern India, and Bishan Singh Bedi was the only representative of the north to be a member of both the tours. One only need listen to Mr Bedi and Kapil Dev to understand how parochial and steeped in Englishness the Indian teams of that era were.

In his exhaustively researched book, Prashant Kidambi, associate professor of colonial urban history at the University of Leicester, argues that the Indian cricket team that visited England in 1911 was the first effort at putting together a "representative national" team. That team was no symbol of nationalistic fervour aroused by the Swadeshi movement of 1905 and the partition of Bengal, which the British were forced to undo in 1911.

The team was "constituted by, and not

against, the forces of empire." If the team's visit to England was to affirm the imperial bond at a time of political upheavals in British India, its composition was less representative of Indian social realities. The team had six Parsis, three Muslims and five Hindus, including two Dalits. Bhopinder Singh, the Maharaja of Patiala, all of 19 years old and anxious about his place in the imperial establishment, led the team.

The author has written engagingly about the Parsi pioneers, who overcame British resistance to start playing cricket in what was then Bombay in the late 19th century. There is also a chapter on "Ranji" and another on the travails of the Patiala royal, the team's captain. Another on the "Indian Summer" in England in 1911, to coincide with the 'Festival of Empire' and grand coronation ceremony in London, is a delightful read.

If Ranjitsinhji is considered the father of Indian cricket, few remember his contemporary Jamsetji Merwanji, a Parsi gen-

kho-kho, marbles, gilli-danda, and others. Mr Modi said traditional games enhance not just physical ability, but also logical thinking and make us aware of "our culture and traditions".

The just concluded cricket World Cup had millions watching, but market forces have discovered there is money to be made from north India's fascination for *kabaddi*; football is suddenly in vogue with the urban youth and hockey is seeing better days. Athletes like Hima Das are emerging from distant corners. Cricket's popularity in India coincided with economic liberalisation. The next cricket World Cup will be held in India. With England finally winning a World Cup, there is renewed interest in the sport in the country of its birth. But has the sport reached its zenith in the land it made its own at least in the last couple of decades?

CRICKET COUNTRY: The Untold History of The First All India Team

Prashant Kidambi
Penguin, ₹699, Pages: 453