Tribunals stuck in low gear

Appeals cannot be heard as chairmen or technical members are not appointed

OUT OF COURT

M J ANTONY

The last decade saw a proliferation of regulators and tribunals. Each scam produced a new one. Later, raw wisdom dawned on the decision makers that tribunalisation had gone too far and their number should be reduced. The tribunals have not substantially lightened the burden on regular courts, which was one of the pious intentions. Moreover, most of those entities are non-functional due to the lack of infrastructure, fund crunch and chronic vacancies of judicial and technical members.

Judges have been speaking about this crisis from different platforms. Now, in three major judgments, they have taken to writing about it. Earlier this month, while upholding the amendment to Insolvency and Bankruptcy Code, a long "post-script" was added to the judgment by three judges of the Supreme Court. In *Pioneer Urban Land vs Union Of India,* they stated that some "recalcitrant states and Union Territories" have not set up the Real Estate Regulatory Authority and appointed adjudicating officers. The court directed them to do so in three months and file compliance reports. The central government was also directed to file a similar affidavit of compliance on its part. "It is absolutely necessary that the NCLT and the NCLAT are manned with sufficient members to deal with litigation that may arise under the Code generally."

While these tribunals are comparatively new, the old ones are in dire straits. This is evident from two other recent judgments of the Delhi High Court — one dealing with intellectual property rights and the other with competition law. In *Mylan Lab vs Union of India,* the complaint was that the company's stay application regarding a design could not be taken up because of the absence of a technical member in the Intellectual Property Appellate Tribunal (IPAB). The court called for the status of the various tribunals under IPR laws.

According to the status report, IPAB was established in 2003. It hears appeals under the Patents Act, the Copyright Act and the Plant Varieties Protection Act. No technical member (copyright) has been appointed till date. With respect to patents, the post of technical member was lying vacant since May 2016. With respect to trademarks, the post of technical member was lying vacant since December 2018. There is only one technical member relating to plant varieties protection.

IPAB had also begun to receive Geographical Indication appeals from 2009 and till date only 12 appeals have been disposed of. This was done by an apparent loan system. The technical member of trademarks will join the bench as technical member for hearing the Geographical Indication matters along with the chairman. Even this system does not work well in most IPR cases because either the chairman's post is vacant or the technical member is not appointed. So there is a logjam in all these IPR appeals.

Another judgment of the Delhi High Court dealt with the situation in the Competition Commission of India (CCI). In *Cadd Systems vs CCI,* a company was accused of cartelisation in a tender to conduct tree census in Pune using GPS. When CCI passed an order against it, the firm moved the high court alleging that the CCI was functioning without a judicial member and was not competent to adjudicate the matter. The plea was rejected because the law has provided a loophole (Section 15) by which CCI can function without a judicial member. This clearly runs counter to various Supreme Court judgments which had asserted that a judicial member is mandatory. However, the court dismissed the challenge observing that "plainly, interdicting CCI from passing final orders would effectively bring its functioning to a standstill". This ad hocism will repel any corporation which looks for ease of doing business.

There are other quasi-judicial bodies like the consumer forums established in every district in the country but whose coram is never full. In south Delhi, for instance, there is a build-up of final hearing matters because there was no president for nearly two years. One lady gives out the next date of hearing, usually four months hence. The above state of affairs affects both large corporations who want to enter manufacturing sector as well as individual consumer who buys goods and services. The time for bandage solutions or looking the other way is over.

CHINESE WHISPERS

Gandhi as a prisoner

The National Archives of India, in collaboration with Oxford University Press, has published *The Diary of Manu Gandhi 1943-44*. Edited and translated by Tridip Suhrud, currently provost at the CEPT University, Gujarat, the book will be launched on Thursday at 5 pm at New Delhi's Nehru Memorial Museum and Library. Manu is Mahatma Gandhi's great-niece. She joined him in 1943 as an aide to the Mahatma's ailing wife, Kasturba, when the couple was in the Aga Khan Palace prison in Pune. Manu remained with Gandhi until his assassination. She wrote 10 diaries, which years after her death were handed over to the National Archives. The first volume of *The Diary of Manu Gandhi* is a record of her life with Gandhi in 1943 and 1944. Authenticated by Gandhi himself, the entries in the diary throw light on his life as a prisoner and the "spiritual and educational pursuits of an adolescent woman who takes up writing as a mode of self-examination". It is the subsequent volumes of her diary, which are to be published, that have references to Gandhi's controversial experiments with celibacy.

Busy Thursday

Thursday promises to be a politically busy day in New Delhi. While the Nehru Memorial Museum & Library will host the launch of a book at 5 pm, the Congress will at that particular hour kick off the 75th birth anniversary celebrations of former prime minister Rajiv Gandhi in another part of the city. Congress General Secretary Priyanka Gandhi Vadra and a group of party leaders have planned the event at the Indira Gandhi Indoor Stadium. Congress President Sonia Gandhi *(pictured)* will address the gathering and there will be cultural events to highlight Rajiv's contribution to the country. The DMK plans to organise a protest at Jantar Mantar to demand the release of leaders of Jammu and Kashmir's mainstream political parties. The TMC has said it will join the DMK in the protest. Some other opposition parties are likely to lend support.

Diplomatic mission

The British High Commission in New Delhi wants Indian women between 18 and 23 to apply for its "High Commissioner for a Day" competition. The winner will get to head a diplomatic mission for a day — overseeing the UK's network in India, leading daily briefings, and interacting with important stakeholders and the media. The competition celebrates the International Day of the Girl Child on October 11. This is the third year of the competition. Last year's winner was Esha Bahal. She is pursuing her master's degree while continuing her work supporting the LGBT community. The 2017 winner, Rudrali Patil, recently finished her master's in international law at the Fletcher School of Law and Diplomacy. A jury at the British High Commission will select the winner.

GST: Account and accountability

A close reading of the CAG's audit of the two-year-old indirect tax regime reveals systemic flaws, not just temporary glitches

NITIN SETHI

In July, the Comptroller and Auditor General (CAG) of India conducted its first ever audit of the goods and services (GST) tax regime, the implementation of which has been a signature initiative of the National Democratic Alliance, and pointed to many flaws that persist two years after GST's nationwide rollout.

These were the headline findings that were widely reported. A closer reading of the report reveals some startling and worrisome facts. These findings, it should be noted, are from a partial audit exercise because in breach of constitutional provisions and legal obligations, CAG was not provided full access to the GST database. With the Union government preventing a comprehensive audit, CAG carried out a test audit instead.

As the report points out, "Providing such data as CAG may require is a constitutional and legal requirement." CAG's persistence got it aggregated statistics instead of full access to granular data. "...(The) audit, therefore, was hampered in the detailed analysis of pan–India transactions," it says.

But even this limited exercise proved eye-opening. "[T]he gamut of issues brought out even in this limited audit point to serious systemic deficiencies that need to be addressed by the (revenue) department."

Granular, comparable and regularly updated data on GST has never been shared by the government with researchers or the public. This has made it difficult to review GST's functioning beyond the headline gross monthly collections. So far, reviewers have tried their best to draw a picture out of the Controller General of Accounts (CGA) figures, the government's partial responses to Right to Information Act, answers in Parliament and the occasional discussions and data found in records of GST council meetings. But these discrete packets of information do not permit a deeper analysis.

CAG's test audit shows us why such granular information is vital. The audit tells us that the state of GST is in much worse shape than what the government has suggested.

Take the example of one gross error CAG discovered in the sample data it was allowed to test. Just one individual entity in Andhra Pradesh erroneously made a single entry in the GST online records for input credit worth ₹6.45 trillion — amounting to 79 per cent of the input credit claimed across the country by all registered entities in one month (₹8.19 trillion). This erroneous entry went undetected in the system till CAG pointed it out during the audit.

In fact, the auditors noted a trend of anomalies in the input credit generation. It warned of consequences for not just overall revenue collected but also how the tax collected on inter-state transactions is shared with states. The auditors concluded, "The system in vogue today is an unverified return, without an IT-based checking of invoices and is prone to ITC frauds. The self-correcting system, as originally envisaged, is not in place and this has led to continuation of avoidable assessee-tax officer physical interface instead of IT-based interface. Without invoice matching and auto generation of refunds, assessments etc on the whole, the envisaged GST tax compliance system is non-functional."

One of the chief objectives of GST was to reduce evasion and fraud. In 2018-19, GST Intelligence officials detected 1,620 cases worth ₹11,251 crore of fraud. In the absence of automated checks, officials had to depend on manual checks and analytics coupled with field investigations to unearth these frauds. In July this year, they detected the case of an individual who had floated 90 fictitious companies, operated 173 different bank accounts on the GST database and created fictitious trade worth ₹7,672 crore helping "established traders and cotton yarn spinners" to defraud the government of ₹660 crore of revenue. More than a 100 such cases of fraud had been detected by June this year.

The fundamental idea that distinguished GST from previous indirect tax regime was the use of 100 per cent voucher-to-voucher matching to avoid cascading tax-on-tax. But with government putting this on hold, the tax system has become highly inefficient. It's led to leakage of tax as well as problems in revenue-sharing between states and Centre, the audit notes.

The audit found, without the automated matching of vouchers, the GST system is unable to generate all the reports required to correctly settle IGST into the states' and Centre's shares. This led to ₹1.77 trillion of IGST standing unsettled by the end of FY18. Breaching the law, the Union government wrongly appropriated an extra ₹57,450 crore of state's share from this in FY18-19. CAG found that the IGST settlement system continued to be flawed till as recently as May 2019.

In breach of constitutional provisions and legal obligations, the CAG was not provided full access to the GST database. With the Union government preventing a comprehensive audit, CAG carried out a test audit instead

Another reflection on how the GST regime continues to be hobbled is the CAG's conclusion that, "While it was expected that compliance would improve as the system would stabilise, all returns being filed showed a declining trend of filing from April 2018 to December 2018." Introduction of GSTR-3B returns allowed unverified claims of input credit, which in turn led to reduced annual filings which would allow tax officials a degree of scrutiny. The government plans to pilot-test and introduce yet another set of returns this year.

It is worth recalling that the previous indirect tax regimes were riddled with loopholes as well. How better has the GST done and is it improving? The CAG audit and other data suggests it could be far from the efficient new alternative that was once conceptualised.

The audit notes that the revenue for the Centre from indirect taxes on goods and services subsumed under GST fell by about 10 per cent in 2017-18 over previous year even after accounting for the excess apportionment of states' share that year by the Centre. But, a conclusive review remains elusive till the government begins to release more granular and comparable data on the complex backend of GST to a deeper scrutiny, by researchers, auditors and the public.

INSIGHT

Those in power must empathise

Apart from the hardware of macro-economic policy, officials in power must implement a software solution of listen, listen and listen

R GOPALAKRISHNAN

Until just a few months ago, the Indian economy was supposed to be booming, among the world's fastest growing. Suddenly, high-level discussions are going on about a slowdown amidst disbelief and confusion. Although the Prime Minister welcomes businessmen as wealth creators, others in authority browbeat (like threatening a jail term for not spending corporate social responsibility or CSR budget), bureaucrats interpret data to avoid upsetting ministers, while bankers and economists diagnose ailments from 30,000 feet height.

I have no doubt that government wants to appreciate the real problem, but it must first admit that there is a problem. Maybe it can follow the reductionist approach of understanding a complex system by studying the interaction of its parts as Descartes advised in 1637 in his *Discourses Part V*.

At an atomic level, the problem is that people feel bullied and threatened by the system. Important people have inadequate empathy for the unimportant people.

Power diminishes the mirror neurons in our brain, resulting in a lack of empathy. This affliction has been observed for centuries. The lack of empathy manifests as powerful people do not listen. They behave defensively, maybe even arrogantly. Molecular level issues are dismissed as stray, so leaders do not perceive the ground-level view. In this situation, leaders must assemble the ground level signals from the level of those who drive the economy — business and entrepreneurs.

With constructive intent and in good faith, I present a ground-level perception of the empathy problem that ails the economy through five stories of business. These examples are at the molecular level. This perception is the reality.

- A well-known and successful entrepreneur committed suicide. In a note, he expressed his unbearable tension from the attitude and behaviour of tax authorities. This accusation may be incorrect, but it was his perception. The entrepreneur has surely expressed great pain.
- An entrepreneur complained that he and his ilk were harassed by the "un-angelic" angel tax. Harshly worded demand notices were issued to many start-ups, and the advocates of entrepreneurship cried out in agony. This persisted for months, until energies began to get sapped and stocks of newsprint began to run out.
- A mindless intent is announced that a shortfall in CSR expenditure will be treated as a criminal offence.
- A retired manager was served a notice by the Service Tax Audit Department to furnish documents pertaining to 2014. His tax advisor's response carried a covering letter which merely stated that "since the matter of the jurisdiction of Service Tax Audit is in the courts, the documents were being submitted without prejudice to the client's rights". The Service Tax Audit officer became furious. He threatened that he would pass a unilateral order and that the matter would go into appeals for the next 20 years. What a crude threat to a lawful tax payer!
- A company director was served a non-bailable arrest notice by a criminal court in Bengaluru. The shocked director discovered that the Registrar of Companies, Bengaluru, had filed a criminal complaint that the director had served as director on more than 10 companies after the new Companies Act came into force on April 1, 2015. The director had to neutralise the non-bailable warrant by appearing before a criminal court in Bengaluru. After an expenditure of ₹1.5 lakh (fares, lawyers' fees, surety bond), the director submitted that the RoC had erred and that he had not been a director of more than 10 companies as alleged. (It is, anyway, unclear how this could be construed as a criminal offence). It took the RoC Bengaluru six months, including sending files to Delhi, to withdraw its original complaint without a word of apology to the distressed director.

Apart from the hardware of macro-economic policy, officials in power must implement a software solution of listen, listen and listen. There is a problem. If officials listen and switch on their empathy neurons, a more positive mood will surely emerge.

The author is a corporate advisor and distinguished professor of IIT Kharagpur. He was director of Tata Sons and vice-chairman of Hindustan Unilever.
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LETTERS

May better sense prevail

This refers to "PM Modi raises Imran Khan's 'extreme' anti-India rhetoric with Donald Trump" (August 20). Prime Minister Narendra Modi did nothing wrong by conveying India's deep concern to US President Donald Trump. During his 30-minute telephone conversation with Trump, PM Modi *(pictured)* reportedly highlighted the importance of creating an environment free from terror and violence, and eschewing cross-border terrorism without exception, apart from raking up various issues concerning Indo-US bilateral trade.

Incidentally, following their prolonged talks, US President Trump is understood to have urged Pakistan Prime Minister Imran Khan to moderate his anti-India rhetoric. Mind you, the Pakistani PM has desperately been trying to use every trick up his sleeve to somehow malign India at the global level notwithstanding the fact that he has no locus standi in the context of the abrogation of Article 370. All his ill-conceived attempts have so far turned out to be a damp squib. But sadly, instead of learning any lesson, Khan has stooped low by not only launching Pulwama type terror attacks, but also extending nuclear threats to India. One wishes that better sense finally prevails; otherwise Pakistan will grossly repent his silly mistakes.

S Kumar New Delhi

Sustainable growth

This refers to "Develop corporate bond market sustainably" (August 20). The Indian economy is slowing and the central bank is cutting interest rates. But the cost of long-term money is refusing to budge. What could be troubling the market is the unknown quantum of public spending via borrowings, that are but sovereign liabilities, beyond the ₹7 trillion fiscal gap. The FCI alone has borrowed over ₹2 trillion, most of it from non-market sources as EPF, postal savings, stressing the need for deepening of the Indian corporate bond market to meet the funding requirement of the infrastructure sector, particularly by insurance companies and pension funds.

Despite interest rate cuts, the 10-year Indian government bond yield was tracking at 7.4 per cent till recently, only to slip to sub-7 per cent level now, as falling crude oil and slowing economic growth feeds speculation on monetary easing by the RBI. The banking sector and bond market reforms were soft-pedalled when global economy was in better shape. But the Trump-disruption era of uncertain duration is upon us and it will be brave to even contemplate them.

R Narayanan Navi Mumbai

Favourable ecosystem

This refers to the editorial "Boost for start-ups" (August 19). Though technology start-ups have grown in number in recent years, there is enough scope of the segment to grow manifold, if a proper ecosystem is put in place. Amendments in the Shares and Debentures Rules of the Companies Act, 2013, enhancing the limit for the issue of shares with differential voting rights (DVR) is a welcome step. Another positive aspect of the amendments is that start-ups no longer have to demonstrate three years of distributable profits before issuing DVR shares or launching an initial public offer (IPO). This is a much needed relief for the start-ups that can now manage their funding plans better without bothering about profit figures in the initial years or losing operational control of the enterprise.

By bringing out these amendments and having earlier addressed the issues arising out of angel tax, the government has shown positive intent in building a favourable ecosystem for start-ups. Hopefully, the start-up movement will become big in India, producing many more unicorns.

Sanjeev Kumar Singh Jabalpur

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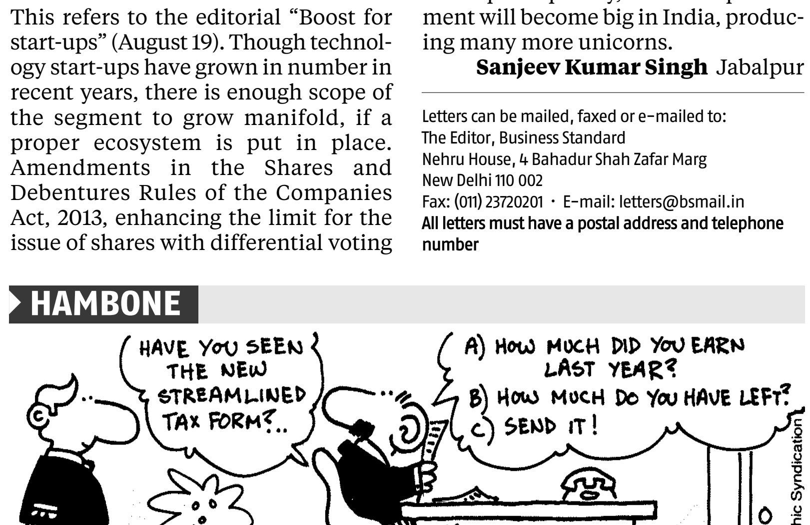
HAMBONE



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In the right direction

The DTC task force recommendations will reduce litigation

The task force on the Direct Tax Code (DTC) submitted its report to Finance Minister Nirmala Sitharaman on Monday. The government has not yet given any timeframe for releasing the report (it should put it in the public domain soon to enable an informed debate), but some of the recommendations have been reported, including by this newspaper, and are in the right direction. For instance, the report has proposed changes in personal tax slabs to benefit the middle and upper-middle class Indians, though the extent of the reduction and the status of exemptions are not clear. Further, the panel has reportedly recommended reducing the corporate tax rate to 25 per cent for both domestic and foreign companies. Over 99 per cent of domestic firms are already at this level and the rate is likely to be reduced for the rest in the coming years. Therefore, there should not be any difficulty in accepting this recommendation. The reduction in the tax rate for foreign firms will help bring more investment and boost growth in the medium to long run. Some of the foreign firms may, however, wait for the fine print as the panel has proposed a branch profits tax on the amount repatriated to their foreign partners.

However, the most significant suggestions are in the area of tax disputes. The task force has suggested replacing assessing officers with assessment units. This is in addition to the idea of faceless scrutiny of cases picked centrally and allocated randomly. Also, taxpayers may be allowed to go for negotiated settlement through a collegium of commissioners. This will help reduce cases of harassment by tax officials and make life easier for taxpayers. Further, the report has recommended changing the rules for reopening assessment cases. It should be done on the basis of pre-defined criteria. All this will help reduce litigation and is likely to aid both the government and taxpayers. Currently, there are tax-related disputes worth about ₹6 trillion. It is no secret that the Income-Tax Department is the largest tax litigant, and the success rate is pretty low. Often, arbitrary or irrational demands are raised by assessing officers, because they must meet unrealistic targets, on which hinges their performance appraisal. This results in the taxpayer invariably filing an appeal. So any step to reduce litigation must be welcomed.

Overall, the task force has made all the right noises. Fundamentally, there is no dispute that tax rates need to be brought down for both individuals and firms. However, what would perhaps be worth debating at this stage is whether the current fiscal situation will allow the government to move in this direction. In order to make a significant difference, the tax department would need to work on compliance. Irrespective of what the government decides to do with the recommendations of the task force, the tax department should build capabilities through better use of technology to check evasion. It is important to bring more people in the tax net to increase revenue. At the broader level, the task force has given an opportunity to the government to rewrite direct tax laws, and it should aim to reduce rates, broaden the tax base, remove distortions in the system, and contain the possibility of disputes.

Population and patriotism

Birth rates are influenced by overall development

Speaking from the ramparts of the Red Fort on Independence Day, Prime Minister (PM) Narendra Modi equated population control and patriotism: "Population explosion will cause many problems for our future generations. But there is a vigilant section of public (who) ... have a small family and express their patriotism to the country. Let's learn from them." The PM is not wrong that India's large population has stressed its infrastructure, its natural resources, and its administrative and educational capacity. But, in a sense, the population problem is yesterday's problem. While the population will continue to grow, it is not an increasing problem. Indeed, according to the United Nations' population division projections, the number of Indians under the age of five peaked in 2007. The number under 15 peaked in 2011 and is now falling. The current generation of under-25 years will be India's largest ever — its demographic "bulge". India's own figures on the total fertility rate, or TFR, from the Sample Registration System of the Office of the Registrar General of India back up this slowing of births. The nationwide TFR has steadily declined from 3.24 in 2001 to 2.53 in 2011 to an estimated 2.2 now, and will be lower by 2021. The larger part of future population growth, therefore, is going to be on account of increased longevity and the growth of the 60+ age group as a result of better health, nutrition, and care. This is, of course, a desirable outcome.

This overall improvement conceals considerable geographic and social diversity. In many parts of India, such as the South Indian states, Kashmir, and West Bengal, the TFR is particularly low — at European levels or below, in fact. Many minority communities, such as Christians, Buddhists, Sikhs, and Jains, have their TFR below the replacement level of 2.1. But areas like Uttar Pradesh (with a TFR of 3), Bihar (a TFR of 3.2), and other parts of the Hindi heartland continue to see significantly high birth rates. Thus, if the PM is serious about managing the population increase, these are the areas that should be targeted. In other words, the challenge is development; population control is a derived benefit. The lessons of India's past experience with family planning should be taken on board. Behavioural change comes about as a product of external stimuli. The most important factors are increased urbanisation, access to income security, lower infant and child mortality rates, improved public health standards, occupational patterns, and so on. Female empowerment, including the number of women working and the effectiveness of female education, may have an even greater role to play.

Linking the issue of birth rates to patriotism is a wrong way to look at the problem. Most differences, including between communities and regions, can be best explained through other development indicators. Any policy framed as a result should take these facts into account. The government might want to consider giving incentives to those with two children or fewer. However, the fiscal situation at the moment is far from being comfortable, and there are many other calls on the government's purse — so new items of expenditure to address this problem might be unwise. The focus should be on extending health care, expanding urbanisation, and female empowerment in left-behind areas.

ILLUSTRATION: BINAY SINHA

GDP measurement and the slowdown

Although there are some structural issues, the economy is slowing largely due to cyclical factors

Arvind Subramanian's view that India's Gross Domestic Product (GDP) was over-estimated after the 2011-12 base revision is being used incorrectly to argue the slowdown is likely to be recalcitrant and worse than it appears. Subramanian's empirical results cover the period 2011-2016 and have been subject to widespread criticism to which there is no satisfactory response. We show his recent heuristic arguments to be equally unsatisfactory. Therefore, they cannot illuminate the recent period. The National Accounts Statistics (NAS) data shows a slowdown now and showed a slowdown continually in investment and exports, which was earlier countered by credit-fuelled consumption.

In a rejoinder paper, Subramanian de-emphasises his estimations, choosing to focus on puzzles such as Indian growth rates remaining high despite a number of shocks and a fall in exports and investment growth, in an attempt to recreate Indian growth rates from the demand side.

S MAHENDRA DEV & ASHIMA GOYAL

It is true that export growth declined significantly. But domestic consumption and service growth was high and could have compensated. He does not come to grips with the fact that India had an unusual service-led growth since the reform in the 1990s. A large diversified economy has more ability to absorb shocks compared to small export-dependent economies. If one sector slows, another expands.

Demand components were underestimating GDP even before 2011 and, therefore, cannot be used to link underestimation to measurement changes. Demand-side estimates, based more on benchmarks and thumb rules, are not robust compared to production-based estimates. Even taking demand side, the NAS estimates tell a consistent story. Investment declined from about 34 per cent to 29-30 per cent of GDP, as clearly shown in the official estimates. Underutilised capacity as well as improvements in productivity allowed consumption-led growth that arrested any significant growth decline till 2017-18. Recent slowdown in consumption credit due to problems in the non-banking financial companies (NBFCs), as well as election-related postponement in private investment and few structural issues, explain the decline in growth to 5.8 per cent in the last quarter of 2018-19.

Subramanian argues the Reserve Bank of India (RBI) consumer confidence survey shows a fall in confidence, so growth could not have been consumption-led. Moreover, credit slowed. But credit fell to manufacturing not to services. There was a rise in retail credit as private banks and NBFCs competed to lend to consumers, financing a consumption boom. Consumption credit growth was high until the IL&FS crisis. Household liabilities rose consistently. Their gross domestic savings fell from about 23 per cent to 19 per cent of GDP. The aggregate credit data he uses cannot capture these compositional changes.

Increasing use of technology has raised productivity. It is possible that outdated methodologies were underestimating growth rates before 2011—changes may be capturing value added, quality and productivity improvements. Intellectuals sometimes get wedded to concepts and ideas of underdevelopment they are unwilling to shed.

Subramanian argues there could not have been growth in productivity because corporate sector profits declined. But this result is restricted to a corporate database where he does not specify the number of firms. National Sample Survey (NSS) in 2017 showed the unorganised sector's compound annual productivity growth at 7.2 per cent over 2011-2016 exceeded that of the organised sector (3.2 per cent). Demonetisation impacts fall outside the Subramanian estimation period.

Corporate distress in India was narrow, restricted to a few firms largely in infrastructure. That private corporate savings and investments increased from 9.5 per cent to 12.1 per cent and 11.2 per cent to 12.3 per cent of GDP, respectively, over 2011-16 shows diversity in corporate outcomes.

The two possible reasons Subramanian identifies for over-estimation are: (1) use of MCA21 data for industry and (2) absence of double deflation in a period when there was considerable dispersion between different price indices. But issues highlighted are of doubtful validity and also transient. No one has so far showed problems in the MCA data (only the Central Statistics Office has worked on it) except for saying its growth rates are higher than from Annual Survey of Industries and Index of Industrial Production (IIP). Until this is done, underestimation may be as likely as overestimation—there are grounds for both. The database has matured and become more robust based on 3,00,000 active firms. Dummy firms are cleaned out. As divergence between indices dropped sharply in 2017, measured growth should have fallen if deflation was a major cause of overestimation. But growth rose. Double deflation is itself not well-established.

The shift to the enterprise from the establishment approach, which now includes a number of headquarter services, partly explains higher CSO manufacturing growth compared to that from the IIP. Moreover, CSO captures values compared to volume in IIP.

Finally, the NAS data is massive. The CSO uses around 3,000 data sources and more than 300 surveys. No regressions or correlations can substitute it. There are several continuing problems like old benchmarks, informal sector data etc. But, this cannot be used to criticise revision, which is an improvement in these respects. For example, the NSS 2011-12 informal enterprise survey is better than the 2006-07 one used earlier.

The more heuristic arguments Subramanian makes now are, therefore, not more convincing than his empirical estimates.

The present slowdown shows up in the data to its true extent. It is largely due to cyclical factors, although there are some structural issues. Countercyclical polices can be quickly implemented in several sectors to enhance demand, growth and jobs without waiting for structural reforms. Monetary policy can reduce the interest rates further as real rates are still high; abundant liquidity aids transmission. The government can frontload planned expenditure and rebuild confidence.

Dev is director, IGIDR and former acting chairman and member of the National Statistical Commission; Goyal is professor, IGIDR and a member of the PM's Economic Advisory Council

A wake-up call for DoT

The telecom sector has been in crisis for quite some time. The warning signs have been clear as daylight: Exit of the smaller firms, RCom going into bankruptcy, huge losses of incumbent firms, mounting debt and stressed bank assets. The government's insouciance and inaction defies all logic.

Consider the industry-level facts. Revenues normally grew at a steady clip of 5-9 per cent per annum. In the past four years, however, the industry's revenues fell by 20 per cent. The telcos debt (excluding the tower business) has tripled and is now a whopping ₹4.3 trillion. The debt is now 2.6 times its annual revenues. Government revenues (licence and spectrum usage fees) have fallen by 36 per cent.

RAHUL KHULLAR

Disaggregating, look at the private sector. Tata Teleservices, RCom, Aircel, Telenor and Videocon have exited. Debt has nearly quadrupled in four years, increasing by ₹2.8 trillion. Idea-Voda and Jio each have debt of ₹1.5 trillion. In 2018-19, the debt was thrice the annual revenues. Two of the majors have reported losses for the past three years. In 2015-16, when debt levels were relatively low, the EBITDA margin for the three majors was 34 per cent. In 2018-19, this margin had collapsed to 25 per cent; for one firm it was barely 13 per cent.

The public sector picture is even bleaker. In the last four years, BSNL's revenues have fallen by 40 per cent and MTNL's by 30 per cent. BSNL and MTNL have reported operational losses continuously since 2013-14. In 2018-19, BSNL's losses are more than ₹14,000 crore; cumulative losses exceed ₹0.9 trillion. MTNL's losses are greater than its revenues and its debt is nine times its revenues. Except for handwringing, the government has done scant little.

Some distress was inexorable. A shakeout was necessary — there were far too many firms. Exit and bankruptcy were the only options. Further, Jio's entry had to be disruptive — it was the only way it could succeed. Zero price became its USP. The resultant price war wreaked havoc on the finances.

But, it was not a level playing field. Regulatory action became the new invisible hand determining economic fortunes. The Telecom Regulatory Authority of India (Trai) turned a blind eye and let the zero price regime go on and on. Its questionable order on termination charges reduced Jio's payout (costs) and reduced its rivals' revenues (*Business Standard*, September 2017). Then came Trai's egregious order on predatory pricing: Jio was free to price below cost because it could not be a predator and all others were potential predators because they had market share. This order had other odious and anti-competitive provisions (*Business Standard*, 16 March 2018). The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) set aside provisions of the order 18 months later. By that time, the damage was done. The secretary in the Department of Telecommunications (DoT) who drew attention to the falling industry and government revenues was peremptorily transferred.

The severe financial stress raises the spectre of more NPAs for public sector banks. More importantly, it raises questions of long-term commercial viability. Do the math. If the debt-to-revenue ratio is 2.5, then with 8 per cent as the cost of debt, 20 per cent of revenues are required just to service the debt. Then add on the amortisation for spectrum and depreciation (as replacement cost). For two firms where data is available, depreciation and amortisation are, respectively, 20 per cent and 11 per cent of revenues. Even if the latter are judged too high, at today's debt levels, the minimum EBITDA margin to survive is 40 to 45 per cent.

The industry is capital-intensive but its defining characteristic is rapid technological obsolescence. The 3G spectrum auction was held in 2010. 3G systems became operational in 2012 (some later). In 2019 comes news that 3G will be "shut down". The unforeseen obsolescence destroys capital — networks and equipment. Add on the costs of reconfiguring spectrum. Depreciation will nearly always run behind actual replacement cost. In the headlong rush to 5G, pause to ponder: How much capital invested in 4G will be destroyed? What happens to the outstanding debt of ₹4.3 trillion? If an auction is held, can the domestic banking industry fund the requirements? Would a hasty auction end up helping only deep pockets and move the industry to a monopoly?

Exorbitant spectrum prices are the main reason for the spike in debt. The low availability of spectrum has pushed prices to absurd levels. India has 8.6 million subscribers per MHz of spectrum. The counterpart figures are: Germany (170,000), Japan (262,000), Korea (137,000) and the United States (589,000). In India the average holding is 31 MHz per operator; the counterpart numbers: Europe (61) and Asia (49). The desperate need is for the government to locate and then release a large chunk of spectrum. Only then should auctions be held. Releasing spectrum in driblets will result in the same outrageous prices.

The race-to-the-bottom price war has to stop. Even Jio, the only firm posting profits, is not "making money" like its parent. If firms do not have internal resources, future investment is jeopardised.

Schumpeter's creative destruction was predicated on innovation and competitive markets. Competition has been anything but free and fair. Regulatory capture is openly discussed but sotto voce. Perversely, telecom has seen destructive creation — value destroyed for the creation of a new behemoth. The paramount need is to restore a semblance of balance and impartiality to all regulatory decisions, be they of Trai or DoT.

The purpose of regulating the industry was, inter alia, to "protect interests of service providers...and promote and ensure orderly growth of the telecom sector". Regrettably, this has been all but forgotten. This is a wake-up call to DoT.

The writer is former chairman of Trai

Kashmir from the ground up

BOOK REVIEW

CHINTAN GIRISH MODI

"I come from a place where funerals of the young are political events, mourning is permanent politics, and the people are in a constant battle between memory and forgetfulness," writes Gowhar Geelani, whose book, *Kashmir: Rage and Reason*, is a reality check for Indians who think peace can come to the valley via curfews and communication clampdowns, and the promise of economic growth can magically erase the evidence of bloodshed. Self-determination is too precious a dream to give up, so those who make it their vocation are celebrated as heroes. Kashmir is a place where tombstones of slain militants are like shrines, and people venerate them so much that a visit to the martyrs' graves is considered no less than a pilgrimage.

The book takes off from the encounter killing of Burhan Wani, a young man who is a martyr to most Kashmiris but a terrorist in the eyes of the Indian state. Why did the son of a school principal join the Hizbul Mujahideen, and become a militant? Why did people from all over Kashmir put their lives in jeopardy, and walk several miles for his funeral? This is the story Mr Geelani wants to tell. It is the story of not just one individual but of Kashmir itself — a flashpoint of conflict between two nuclear powers, India and Pakistan, that seem to care more about the land than the people.

Mr Geelani does not valourize or discredit armed resistance. He keeps his ear to the ground, writes about his impressions of the situation, and interprets it for readers who are outsiders looking in. As a journalist and political commentator, he has documented the history of political resistance in Kashmir, and its changing contours over several years. "The reason why people continue to support local militants is because most Kashmiris feel oppressed, dispossessed and disempowered on multiple fronts, as spaces for democratic dissent stand choked in the restive region. There is a ban on peaceful assembly, and student politics in universities is not allowed either," he says.

Mr Geelani is based in Srinagar, a city where he grew up in the early 1990s and personally experienced what it felt like to be seething with rage when armed personnel frisked schoolchildren, forced them to prove their identity in their own land, threw their school bags away, and hurled abusive words at them. Recalling that time, he writes, "Young men in their thousands had crossed the LoC to receive arms training in camps run by the Pakistani Army and its spy wing, Inter-Services Intelligence (ISI). I was too young to take such a life-turning decision then, of fighting the State with a gun in my hand. All my hands could handle well were a cricket ball and bat, as an off-spinning all-rounder, and a pen, which I hoped to put to good use in the years to come."

Mr Geelani writes about the political aspirations of his own people. This is a position of great responsibility. He does not collapse various shades and extremes of opinion but engages with them carefully, unveiling layers to which non-Kashmiris may find difficult to relate in the absence of local knowledge about the social ecosystem in which resistance plays itself out. He notes the prevalence of pro-Pakistan sentiment in the valley but also points out how Pakistan has appropriated the Kashmiri independence struggle by sending in Islamist militants, thus inviting speculation about possible links with Daesh. He laments the hardships faced by Kashmiri Pandits who had to seek refuge in camps in Jammu and elsewhere.

"The problem is that very few Pandits or Muslims acknowledge the pain and suffering the other has endured...Voices that have dared to rise above ideological and religious differences to acknowledge pain as pain, without making any attempt to quantify or reduce it to a mere number game, are rare," he writes. He has little faith in the leadership of the Abdullahs and Muftis but that does not diminish his hopes for Kashmir. "Can Srinagar become a bridge of friendship between Islamabad and Delhi, and not a bone of contention? Can someone make it happen, instead of waiting for things to happen? Who will extend the hand of friendship? Who will reciprocate? Will Srinagar produce such a statesman?"

This book was published before the abrogation of Article 370. As restrictions on movement are relaxed, and phone lines are restored, more Kashmiri voices will be heard. What forms of resistance might emerge to meet the demands of the present moment? What kinds of solidarities might shape up across movements? What role will the Kashmiri diaspora play? The answers could take a while to come, and perhaps the next edition of Mr Geelani's book will give readers more to chew on.

KASHMIR: Rage And Reason
Gowhar Geelani
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