Protecting lawyer's privilege

There can be problematic ethics among practitioners of law but that is quite the case with any profession and its practitioners

WITHOUT CONTEMPT

SOMASEKHAR SUNDARESAN

If news reports of this week are to be believed, yet again, investigative agencies have sought to make inroads into the domain of lawyers to conduct investigations on their clients. This is a breach of one of the foundational precepts on which a democratic society is built.

There is no other profession that is mandated by law to be a keeper of confidence. Under law governing evidence, confidential communication between a lawyer and her client is protected from extraction as evidence. Once a lawyer has been engaged, the communication between the client and the lawyer is protected from being compelled into evidence in proceedings. Therefore, the "privilege" enjoyed by this relationship is that legal advice given, the communication of facts on which advice is sought, and all related correspondence, occupy a sacred protected space that cannot be intruded into.

Indeed, a client may explicitly waive the privilege and ask the lawyer to make a disclosure of such privileged content. Likewise, if the lawyer is not actually providing legal services, but is herself involved in a violation of law that is being probed, arguably, the protection of privilege would not be available. This is the problematic area where, if an investigative agency were to lightly level allegations of colluding and participating in violation, the privilege can be lightly weakened.

Every society has its own norms and levels of acceptance of how much these spaces should be lightly intruded into. If news reports of this week are to be believed — that investigative agencies are seeking to express judgement about quality of legal advice given by lawyers in a certain case — a serious investigative intervention is afoot. If a probe into whether the lawyer was right or wrong in her advice to a client were to be par for the course, not only would the privilege be breached, but even in non-litigation situations, lawyers would become "bureaucrats".

With apologies to the "steel frame of India", the term in the pejorative sense is used to connote playing safe to push files without taking a specific position or stand on any issue. The inclination, and thereby the capacity of the bureaucracy, to be decisive, has already been chilled over the past several years. Even routine decisions backed by precedent have been called into question in anti-corruption probes. This has led to bureaucrats currently in office leading a fearful life.

Picture this state in the arena of private investment, where lawyers are involved in advising clients on investing capital. A central problem with the economy today is the bad sentiment in private capital formation. That negative sentiment just received a stronger disincentive, if legal advice that is sought by investors too is to be called into question.

There is a good reason for protection of the sacred space of communication between clients and lawyers. As a society that believes in the right not to be condemned without a fair trial, it is our society's belief that no person should be deprived of his freedoms without due process of law and proper procedure established by law. This finds its way into the law governing evidence and even the Constitution.

A person accused of wrongdoing requires the privacy of a protected space to have a conversation on her narration of facts and events. If such a space does not exist, the only narrative would be that of the accusers. With that, the only requirement to establish a wrongdoing would then be to accuse a person of wrongdoing. Indeed, courts are repeatedly being told that custodial interrogation is necessary because a suspect is "not co-operating" — a term that is now synonymous with "not confessing to the accusation".

Indeed, there can be problematic ethics among practitioners of law but that is quite the case with any profession and its practitioners. The ethical facets are subject matter of disciplinary proceedings before the institution that is charged with the jurisdiction to regulate the profession — not the domain of investigative agencies that are probing the clients of lawyers.

Lawyers are the butt of many a ridiculous joke — it is in the nature of things to laugh at oneself and not take oneself too seriously. Every single case involves an adversarial airing and canvassing of ideas, each of which may be attacked vociferously by the lawyers of the other parties in that case. That brings with it the ability to laugh at oneself and to have fun at one's own expense.

But push that into shooting at the lawyer in a probe against the client, and it would be a recipe for a dystopian society. Utopia (a perfect society) is a mirage since it is tough to attain. But that does not mean one moves towards dystopia (the exact opposite of utopia), which is quite easy to attain.

Laws for gig workers prove a laborious process

A draft social security law has employers who rely on flexible hiring worried about rising costs

SOMESH JHA

In attempting to rewrite the country's complex labour law framework, the Indian government is keen to accommodate the interests of the growing gig economy in which millions of workers are involved. So on September 17, the labour and employment ministry put out a third draft of the Code on Social Security Bill, 2019, in which the terms "gig workers", "platform workers" and "gig economy" appeared. This essentially means, the government wants some sort of social security protection for gig workers.

Gig workers are usually spoken of in the context of on-demand work, such as drivers for Uber and Ola, delivery people for Zomato and Swiggy and so on. Essentially, they are engaged in jobs created by a tech-enabled platform where the worker is not bound to the organisation and can choose to work for as long they want.

Then there are graphic designers, coders, web designers, writers working as freelancers on short-term projects, who also can be referred to as gig workers. They work from stint to stint according to their convenience or availability of a task.

With the explosion of app-based services by domestic firms and multinationals, the size of India's gig economy has expanded rapidly too. According to a recent report by HR consultancy firm Noble House, 70 per cent of companies in India have hired gig workers at least once for major organisational work in 2018.

The dynamics of labour laws come into place in the traditional employer-employee model. A worker is hired directly or through a contractor on a permanent basis or on a fixed-term contract. Depending upon which category under which they fall or the size of the firm, workers in India are eligible for certain benefits — provident fund, insurance, gratuity and, in some cases, protection from termination.

TAKE TWO
ANALYSIS BEHIND THE HEADLINES

But gig workers do not fit into the definition of "employee" or "worker" and, therefore, remain out of India's labour law coverage. The real challenge in regulating is the nature of work that they perform. For instance, 32-year-old Mohit, who delivers food for Swiggy in Delhi, works only three days — Friday, Saturday and Sunday and earns ₹65-₹70 per food delivery on these days. "There is no written contract. I get paid on the basis of the task. I can decide to pull the plug by logging out of the mobile application," he said. Balister Singh, who owns a Chevrolet Sail, drives for both Uber and Ola in the National Capital Region.

The government has sought to maintain status quo when it comes to defining gig workers. The draft law says a gig worker is "a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship."

To ensure the definition is as broad-based as possible, the government has used the term "platform workers" separately in the draft law. "Platform work is an employment form in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment," the draft code reads.

The provisions for gig and platform workers fall under the chapter on unorganised workers, hinting that the government is not ready to classify them as part of the formal workforce where social security benefits are partly funded by employers.

"The government has attempted to balance the needs of gig workers and distinguished them from the traditional employee-employer relationship. This is reflected in the proposal to form schemes for such workers instead of blindly extending the provisions of provident fund and employees' state insurance and so on," said Ajay Singh Solanki, leader, labour and employment law practice at Nishith Desai Associates.

Gig workers, therefore, will remain outside the coverage of Employees' Provident Fund and Employees' State Insurance schemes, gratuity and maternity benefit laws, if the draft code becomes law. These are some of the schemes in which companies take a financial hit through monetary contributions. By not bringing gig workers under the Code on Wages Act, which became law in August 2019, the government has sought to keep them out of the minimum wage legislation too.

THE GIG WORLD

What other countries have tried

- California recently passed a law to reclassify gig workers as employees, instead of contractors
- New York passed a minimum wage law for gig workers last year but didn't classify them as employees
- In the UK, a local court has said that Uber drivers should be classified as employees, getting the minimum wage law benefits; the Supreme Court is set to hear the firm's appeal next year
- The European Parliament recently approved rules requiring employers to inform all workers about their employment terms such as description of duties, no exclusivity clause for work, compensation for late cancellation of work

But the industry is anxious about the government's move to bring gig workers under labour laws.

"There should be inclusive policy-making in which all key stakeholders are invited for consultation, instead of knee-jerk reactions. The government shouldn't end up creating something that destroys a vital industry. Gig workers do need social security benefits, but what needs to be covered and who will bear the cost needs to be clear," Dinesh Goel, chief executive officer of OLX People, pointed out. OLX People helps companies like Zomato and Swiggy hire workers and around 20 per cent of its recruitments in the last six months has been in the gig economy.

The industry's concern is that it will have to bear the cost of social security for gig workers, a move that is not really business-friendly. As Goel points out, the gig economy has been lucrative for employers and employees because of the flexibility that it offers. Solanki cautioned that any attempt to regulate the gig economy will adversely impact aggregators and platforms, which count on the ease of engaging such flexible workers and reduced compliance.

The proposed law suggests that the Central government will frame social security schemes for gig and platform workers that will be mostly related to life and disability cover, health and maternity benefits and old age protection. But the industry is anxious that the government will also "define the role of aggregators" in such schemes once the draft law is approved by Parliament.

The question is whether such laws can be truly effective. One index can be had from the Unorganised Workers' Social Security Act of 2008, which has provisions to frame similar schemes for unorganised sector workers. The United Progressive Alliance (UPA) government had set aside ₹1,000 crore for the welfare of unorganised workers under this Act, All India Trade Union Congress general secretary Amarjeet Kaur said. "Recently, the finance ministry wrote to the labour ministry to take back around ₹700 crore lying underutilised in the fund. The welfare mechanism of unorganised sector workers is in shambles." What failed for a relatively better mobilised section of the workforce is unlikely to work for a section of people as disparate as a driver and a designer.

CHINESE WHISPERS

Restructuring pangs

The proposed restructuring of government departments in Uttar Pradesh on NITI Aayog's recommendation is hanging over the heads of ministers like the proverbial sword of Damocles. Since the Adityanath (*pictured*) government is mulling to pare the total number of departments from nearly 100 to 55–57, the decision is bound to affect a large number of ministries and alter the pecking order in the state council of ministers. The issue has been discussed at length during recent cabinet meetings, although the government seems to be in no great hurry to get it over and done with. It is just a matter of time though.

Facing the music

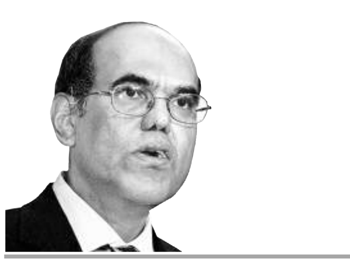
Choosing between the call of duty and a movie featuring your favourite star can be a tough call. A bunch of young sub-inspectors (SIs) in Kurnool district learnt that the hard way when they decided to watch south star Chiranjeevi's 151st and the most ambitious movie till date, *Sye Raa Narasimha Reddy*. The policemen reportedly bunked duty to catch an early morning show at a theatre in Koilakuntla. All would have been well had they not left proof of their day out by posting a photograph on social media. The photograph was noticed by none other than Kurnool SP who was irked that the cops had neither sought his permission nor had they applied for leave. The day also coincided with the inauguration of village secretariat offices in various parts of the state and needed every possible boot on the ground. Last heard, an inquiry had been ordered and probably the SIs are hoping they would be let off lightly.

Agree to disagree

The leadership vacuum in the Congress party continues to roil the waters. After senior Congress leader Salman Khurshid raised an alarm over the future of the party, former MP and Congress General Secretary Jyotiraditya Scindia on Wednesday voiced similar concerns. The party needs urgent introspection to resurrect itself, he said. The two leaders, however, differed on their views about the party's likely performance in the coming Maharashtra Assembly elections. "I strongly believe that Congress will taste victory in the state," said the young leader, while his senior colleagues had said earlier in the day that the Congress is unlikely to taste victory in the Assembly elections in Haryana and Maharashtra.

REMEMBERING B N YUGANDHAR (1937–2019)

A role model for a generation of civil servants



DUVVURI SUBBARAO

It's not easy to forget the first time you met him. Yugandhar, who was a role model for a generation of civil servants, was that kind of an intense person who made a strong impression.

My first meeting with him happened at the Mussoorie academy in 1972 where I reported for training as a young IAS recruit and he, 10 years my senior, was a deputy director. Barely a decade in service, he was already a legend by then for his deft and sympathetic handling of the Naxalite uprising in the tribal tracts of Srikakulam district in north coastal Andhra Pradesh as collector there in the late 1960s.

Yugandhar became our course director some three months after the training had started. Until he came into our lives, the Mussoorie training was an unremarkable combination of an elite public school and a mediocre college — PT and horse riding in the morning, eating in a well-appointed dining hall and banal lectures all through the day.

Soon after taking over as course director, Yugandhar spoke to us — a motley group of trainees with inflated egos and exaggerated notions of self-importance. I have a distinct recall of what he told us: "My job is to prepare you for the rough and tumble of field postings in the first 10 years of your career. No complaints or grumbling about overwork, odd hours, having no time for relaxation etc. That's how it's going to be in the field, and that's how this training is going to be."

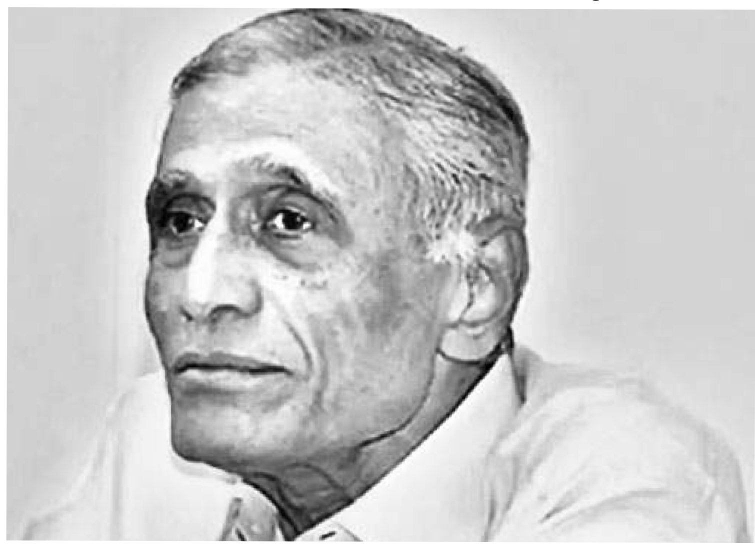
In a sense, Yugandhar defined the quintessence of the IAS — the challenge and opportunity of working at the frontier. He believed passionately in plunging headlong into the field — to see, listen, talk and experience. Whether it is freeing bonded labour or providing drinking water facilities in villages, he believed that the only way a civil servant can be effective was by going out and dirtying her hands.

He visited me when I was sub-collector, Parvathipuram, in the mid-1970s. We went on an intensive three-day tour of agency villages by jeep and occasionally by foot. I had already visited dozens of these villages earlier but going with him and seeing the empathy and enthusiasm with which he interacted with tribal people was a rewarding learning experience. At the end of the tour, he asked me if I had camped overnight in a tribal village and was disappointed that I had opted for the relative comfort and convenience of travelers' bungalows.

Years later, at a difficult phase in my career, he took me under his wings in the small-scale industries department where he was secretary. Working with him felt like a continuation of my training on how to be effective. Other secretaries would summon their subordinates to their office. Not Yugandhar; he'd just walk into your office if he had something to discuss with you. That he did one afternoon and found me reading a report on sick small industries. He obviously didn't think that was good value of my time. Two days later, he told me gently: "Subba, the foundry industry around Rajahmundry has flourished for years; but of late it is showing signs of sickness. Why don't you go and find out what's happening?" Needless to say, that intensive tour in Rajahmundry taught me more about sick industries than a hundred reports.

The value of the emphasis Yugandhar placed on field exposure came to me powerfully later in my career while serving in Delhi where officers from all civil services compete for senior management jobs in the government of India. The IAS enjoys, or at any rate enjoyed, a unique advantage in this competition because of the field experience IAS officers bring to bear on policy making. It's disappointing though that this USP of the IAS is rapidly ebbing away largely because of young IAS officers' apathy for field jobs.

SOURCE: TWITTER @VICEPRESIDENTOFINDIA



In what was an initiative surely inspired by Yugandhar's training, as governor of the Reserve Bank of India, I instituted an outreach programme which required all senior management personnel of the RBI to spend a full day in a village at least twice a year. I believed that this village immersion would help them relate better to decisions that they make on issues such as financial inclusion, priority sector lending or microfinance. I could sense resistance from my colleagues who this was a nuisance in their busy workload. What was most heartening though was that having gone on an outreach visit, virtually all of them appreciated its value; some of them even got hooked on to it.

The last time I met Yugandhar was at a dinner in a common friend's house some six months after I stepped down as governor. We talked about a lot of things including the RBI's outreach programme and about Jalanga — a village near Bhadrak in Odisha that I nurtured as governor, going there every year for five years. With characteristic enthusiasm, he said to me: "Subba, now that both of us are retired, we must go there and see what's happening."

That was not to be. Soon thereafter, he became a virtual recluse. I called him a few times hoping to plan our Jalanga visit, but each time he demurred, possibly because of failing health.

When the news of his passing came, I wasn't shocked, but there was deep sense of loss. Yugandhar is gone but his formidable legacy will survive through a generation of civil servants whom he trained, nurtured, mentored and inspired with a rate combination of energy, enthusiasm and passion.

The writer is a former governor of the Reserve Bank of India

LETTERS

A welcome step

This refers to "Largest exercise kicks off to integrate renewables" (October 9). Shreya Jai has beautifully explained the crucial — and so far not understood — function and importance of renewable energy management centres (REMCs). These centres are poised to play an important role in the overall energy business in the country. At 100gw generation capacity, renewables (essentially solar and wind) constitute nearly 25 per cent of our total installed capacity and it is of utmost importance that these "limited to some hours and seasonal" sources of clean and non-polluting energy are managed efficiently and integrated seamlessly with the national power grid. With our ambitious goal of reducing fossil energy to 50 per cent of the total by 2030, these REMCs will have to play a big role.

Germany, where renewable energy constitutes 85 per cent of the total generation, should be an excellent role model for us. It is fortuitous that GTZ of Germany is funding these REMCs. The Green Energy Corridor (GEC) aimed at transmitting, scheduling, forecasting and integrating renewable energy with the national grid is a key part of our fast changing energy landscape. The Central Electricity Authority's initiative to set up a new division to look after the developments in renewables capacity addition and grid integration is also a welcome step. The 10 per cent year-on-year growth in production of renewables deserves to be applauded.

Krishan Kalra Gurugram

Learn from past mistakes

This refers to "The onion enigma" (October 8). It is not every other day that the government gets the opportunity to benefit farmers directly. A sudden surge in onion prices had given this golden opportunity to it but it has wasted the opportunity completely. At a time when farmers, in general, are under distress as they don't find agriculture a viable profession for them, the government should have resisted the temptation and allowed farmers to earn some extra money. Not only has the government stopped export but it has ordered import of 2,000 tonne of onion while as much as 15,000 tonne is wasted in storage.

It is not a one-off case. Every year, tonnes of food grain goes into the drain due to shoddy facilities at the godowns across the country. As the writer has also mentioned it is between September and November that the government had to manage onion supply well but it did not. The government needs to learn its lessons fast and should address structural issues. It should also improve warehousing and cold storage facilities besides providing technological support to farmers, irrespective of size, so that they can not only earn good returns on their farm produce but also help facilitate exports.

Bal Govind Noida

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HAMBONE

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Clouding renewable power

State agencies should honour their commitments

The renewable energy sector that has been maintaining robust growth to generate hopes of meeting the ambitious goal of 175 Gigawatts (GW) capacity ahead of the 2022 schedule seems to have run into a bad patch. The capacity addition programme has slowed down since last year, prompting Crisil, a rating agency, to predict that the target is set to be missed by a huge 42 per cent. With business as usual, India may, at best, be able to add 40 GW to its present green power capacity to lift the total to only 104 GW by 2022. If this prognosis holds true, Prime Minister Narendra Modi's announcement at the recent United Nations Climate Action Summit in New York to expand the non-fossil energy potential to 450 GW might also come under a cloud.

However, there is still no cause for despair. The constraints besetting this sector may be too many, but most of them are not insurmountable. These range from unstable policies and regulatory challenges to a free fall in tariffs and reneging by state governments and power distribution companies on power purchase agreements (PPAs). Besides, the cost-push effect of the safeguard duty levied on the imported solar equipment and depreciation of the Indian rupee against the US dollar have also added to the woes of this sector, as a result of which investors' interest in this sector has seen a sharp dip. Little wonder, therefore, that nearly a fourth of the 64 GW solar power capacity put up for auctions by the Centre and state governments in recent months has gone virtually abegging. Many of the sanctioned solar projects are also facing glitches in the implementation process, resulting in inordinate delays in their execution. The situation in the wind energy sector is even worse with the bidding process having almost come to a halt. The shift from fixed tariffs to competitive bidding and the increase in the capital cost seem to have shoved the wind power sector into the doldrums.

The trigger for the current slump in capacity addition can be traced to the refusal of some state governments and power distribution companies to honour the commitments made under the PPAs regardless of the court orders and the Centre's counsel against doing so. Following Andhra Pradesh's move to ask project developers to reduce the tariffs mentioned in the PPAs, the Uttar Pradesh government is seeking to achieve the same goal through relatively more coercive means. It has practically stopped procuring wind power on the specious plea that the tariffs have not been approved by the Central Electricity Regulatory Commission, though these rates are about 7 per cent lower than the overall average power procurement cost of the state. Going a step further, the Rajasthan government has mooted in its draft solar and hybrid policy a plan to levy a deterrent charge on plants which sell power to other states. If implemented, this can adversely affect investment prospects in the state, which has the highest clean energy generation potential. As a consequence of all this, the renewable power sector is no longer the preferred destination for foreign direct investment. The banks, too, are turning wary of lending to these projects because of the steady erosion of their viability. These issues, therefore, need to be addressed expeditiously to put this sector back on a high growth trajectory.

The pollution challenge

India needs to build state capacity at multiple levels

The Uttar Pradesh Pollution Control Board (UPPCB) has ordered tanneries in Kanpur to shut down. In August, UPPCB had permitted 126 tanneries to run at 50 per cent capacity, provided they fulfilled the pollution norms. But, as reported by this newspaper, a report of the Ganga monitoring wing of the National Green Tribunal has said that effluents from tanneries, located in Kanpur's Jajmau industrial area, were being released into the river. As a result, tanneries have now been ordered to remain closed until the end of this month. The estimated size of Kanpur's leather industry is ₹12,000 crore, 50 per cent of which is exported. It provides direct and indirect employment to about a million people. What is intriguing is that it is the state agency Jal Nigam, which is mandated to run the effluent treatment plant, not the tanneries. The Jal Nigam has not fulfilled its commitment and has asked for more time to set things right, but it is the tanneries that have to suffer.

At a broader level, this episode highlights several economic and governance challenges that India is facing in its attempt to grow rapidly with increasing urbanisation. However, the issue of externality is not new and, in the Kanpur tanneries case, pollution of the Ganga has wider consequences. Economists have been debating such problems for at least about a century. The issue was first raised by Alfred Marshall and taken forward by Arthur Pigou. In his book, *The Economics of Welfare*, first published in 1920, Pigou noted: "...self-interest will not...tend to make the national dividend a maximum; and, consequently, certain specific acts of interference with normal economic processes may be expected, not to diminish, but to increase the dividend." Pigou discussed various ways of intervention, popularly known as the Pigouvian tax. A carbon tax, for instance, is a good example of such an intervention. However, there has been criticism of Pigouvian tax over the years because, for example, it is not easy to measure social costs.

India needs to tackle negative externalities of industrial development and rapid urbanisation at various levels. Imposing taxes may not always work in containing pollution and damage to the environment. Despite all the efforts made by the government, a large amount of sewage water is still being released into the Ganga in Uttar Pradesh. This along with the case of tanneries in Kanpur shows that India needs to build state capacity to deal with such issues. Tanneries have been closed because a state agency could not handle the project properly. Dealing with pollution will not only require empowering the institutions of local governance but will also need better coordination among different agencies. Engagement of local institutions is necessary as one-size-fits-all solutions may not work in a country like India. Essentially, the state should be in a position to make the necessary investment and monitor the adherence to environment regulations at the local level. The government would do well to attract private investment in waste management in a big way, which will help bring innovation and minimise costs over time.

The challenge of containing pollution will only rise and the government will need to work at multiple levels to ensure that growth and development are sustainable, and closure of industrial units doesn't become a default option.

ILLUSTRATION: BINAY SINHA

Corporate tax cuts and growth

Reduced rates will have little impact in the short run, but could have a significant positive impact on growth in the medium term

A PIECE OF MY MIND

SHANKAR ACHARYA

On September 20, Finance Minister Nirmala Sitharaman announced major changes in the structure of taxation for large Indian companies: The basic rate of company income tax was reduced from 30 per cent (35 per cent including cesses and surcharges) to 22 per cent (25 per cent including cesses and surcharges), a new rate of 15 per cent (17 per cent including cesses and surcharges) for new manufacturing companies (set up after October 1, 2019, and producing before March 31, 2013) was announced and the minimum alternative tax (MAT) rate was cut to 17 per cent (inclusive of cesses and surcharges). The proviso for enjoying these reduced tax rates was that companies had to give up their extant incentives and exemptions. Stock market indices soared and India Inc showered encomia. The reaction from analysts and commentators has been more mixed, ranging from euphoric ("real structural reform") to guardedly welcoming and even extending to some who worried about fiscal "bonanzas" to the corporate sector at a time of serious fiscal stress. To help form a balanced view it might be worthwhile to outline some of the likely economic consequences of these undoubtedly major changes in company tax policies.

First, the tax cut obviously provides a fiscal stimulus in the short run. The government estimates a direct revenue foregone loss of ₹1.45 trillion or 0.7 per cent of GDP. However, as various analysts have noted (such as A K Bhattacharya in *Business Standard*, September 24, 2019, and C Rangarajan and D K Srivastava in the *Hindu Business Line*, October 3, 2019), this may involve a significant overestimate, essentially because it may not have factored in the substantial revenue gains to the exchequer arising from companies giving up extant recourse to exemptions in order to benefit from the reduced tax rates. (Remember, that giving up exemptions is an essential precondition for benefitting from the reduced tax rates.) Budget documents show a total of revenue foregone in 2018-19 from corporate taxes on account of exemptions and incentives of ₹1.08 trillion, mainly because of accelerated depreciation and export benefits. A good part of these may be given up in 2019-20 to avail of the reduced tax rates, bringing the net revenue loss from the tax reductions down to about 0.4-0.5 per cent of GDP. Other things equal, that amounts to a net fiscal stimulus of the same order.

Second, this stimulus will entail additional government borrowing to finance a higher fiscal deficit, leading to higher medium- and long-term interest rates, which will damp investment. This explains the post announcement increase in the yield on benchmark 10-year government bonds by about 20 basis points. So, some of the positive stimulus effects on investment and other expenditure will be negated by bond market developments.

Third, these major cuts in company taxes could have potent incentive effects on corporate investments. After all, a reduction in the tax rate from 35 to 25 per cent should significantly boost post-tax rates of return on extant and future capital. But there are qualifications. Because of the prevalence of incentives and exemptions, the impact of the tax cuts will vary enormously across companies, with many companies choosing to remain in their exemption-using status. Many of the firms which benefit most from the tax cuts already have large liquid balances and are unlikely to augment their capital expenditure plans in the short run. Other tax-saving beneficiaries will use the monies to deleverage and repair stressed balance sheets. An impact analysis by Credit Suisse issued on September 30 estimates that 90 per cent of the short-run tax cut benefits will be either retained as additional profits or used for deleveraging. Of course, further down the road and subject to other economic/financial developments, one should expect positive effects on corporate investments.

Furthermore, the greatly reduced tax rate (from 35 per cent to 17 per cent) for new manufacturing companies should certainly spur investment in this sector (from both domestic and foreign sources) in the years ahead. But the amount of such tax-cut-induced investment will obviously depend on other key elements of the policy framework, such as labour and land policies, the state of the financial and infrastructure sectors, the general ease of doing business, other tax policies, fiscal prudence and the competitiveness of our exchange rate. If those move in a favourable direction, then the force-multiplier effect on investment could be powerful. The reverse also holds true.

Fourth, the tax cuts impart a clear signal in favour of private sector investment and activity. This should have an "animal-spirits-boosting" effect on company investment plans, in particular, and wider economic activity in general. However, this positive effect also will be conditioned by the broader policy environment factors alluded to above.

Fifth, some have argued that the big boost to stock prices from the September 20 actions will have enduring positive effects on stock market valuations and hence, wealth, which, in turn, will induce higher expenditure on consumption and investment. I am somewhat sceptical for at least two reasons. First, reliable quantitative estimates of "wealth effects" in India are notable by their scarcity. Second, share prices are more than usually volatile these days, as the last fortnight has amply demonstrated.

Finally, I wonder how much foreign investment the tax-cut measures will induce and in what sectors. Perhaps oddly, my concern is that if there is considerable foreign investment in non-tradeable sectors, this may shore up, or even further appreciate our already over-valued exchange rate. Recalling that an X per cent appreciation of the exchange rate is equivalent to a X per cent subsidy for imports and an X per cent tax on exports, I worry about the possible negative effects on investment and growth in our import-competing and export industries, unless we manage our exchange rate better than we have in recent years.

So what might be the overall net effect of the tax cuts on investment and growth in the short and medium term? It is obviously hard to say. My own sense is that they will have only marginal effects in the short run and significant positive effects in the medium term. "Significant" could change to "very substantial" if we also undertake meaningful reform measures in the other policy dimensions outlined four paragraphs earlier.

The writer is honorary professor at ICRIER and former chief economic adviser to the Government of India. Views are personal.

Adani's dream, GVK's nightmare

POWER POINT

SHYAMAL MAJUMDAR

The strategy may be completely different, but the Adani group could end up doing in the airport infrastructure business what Reliance Jio has done in telecom. Mukesh Ambani was a late entrant in telecom (Reliance Communications had gone to his younger brother), with Jio starting full-fledged commercial launch only in 2016. But just three years later, the telecom sector is down to three players, and the third entity is under so much financial stress that very few would be surprised if it is forced to retire hurt.

While Reliance Jio took the low-cost tariff route (in fact, the "free" route for quite a while) to decimate most of its telecom competitors, its investment (at an estimated ₹3 trillion so far) in setting up infrastructure has been huge, pushing up the group's debt significantly to ₹2.87 trillion.

The Adani group's debut in the airports business has been equally audacious. Despite its ₹1.26 trillion debt pile, the group emerged the highest bidder for as many as six airports in the government's first such auction in 13 years since the GMR and GVK groups won the right to manage Delhi and Mumbai airports in 2006. Greenfield airports like those in Hyderabad and Bengaluru were also awarded at the same time.

The Adani group's bids far outstripped those of the competitors. For instance, for the Ahmedabad airport, Adani outbid GMR by offering ₹177 per passenger against the latter's offer of ₹85. The stage is thus set for the Adanis to become the third-largest private airport operator in terms of passengers handled, after the GMR and GVK groups. The only other significant player is Fairfax India Holdings, which got its hands on the Bangalore International Airport when GVK sold its stake.

With the government planning to privatise 20-25 more airports in the next phase, a sensible move considering that as many as 109 out of 123 airports in India are loss-making, the Adani group is certain to put in aggressive bids for many of these as well to consolidate its position in the airport infrastructure space. But the process will take time. In any case, these airports have an annual passenger traffic of 1 to 1.5 million only. And, the total volume of passengers at all the six airports that the Adanis have won is less than the 48.5 million that the Mumbai airport alone handles. So, the writing on the wall is clear: If you have to be the largest airport player in the country, Mumbai airport is an important pit stop.

But Mumbai airport is out of bounds as the GVK group holds the controlling stake of 50.5 per cent in Mumbai International Airport Ltd (MIAL). So the Adanis have done what they are best at: They want to pick up the 23.5 per cent stake that two South African companies, ACSA and Bidvest, together hold in MIAL. The group has already offered to buy out Bidvest (13.5 per cent) and ACSA (10 per cent), valuing the world's busiest single-runway airport that handles around 1,000 flight movements a day, at ₹9,500 crore.

If the deal to acquire a significant minority stake fructifies, it will give the Adanis two critical advantages: An insight into the operations of a leading airport and a stake in the Navi Mumbai airport, a 100 per cent subsidiary of MIAL. The matter is in court after GVK, wary of the prospect of the Adanis getting a foothold in MIAL, decided to exercise its first right of refusal.

What the Adanis are obviously betting on is the GVK group's failure to match the offer by October 31 due to its stretched balance sheet. The strain in GVK's finances has been evident for a while now, and matching the Adani bid for the Bidvest and ACSA stake will be difficult for a group that is already stuck with ₹24,000 crore debt. The Navi Mumbai airport project, which achieved financial closure recently, will add another ₹8,500 crore to it. There is already the risk of cash flows not being enough to pay interest, increasing the risk of default. Half the existing debt is accounted for by the power business, which is not exactly in the pink of health.

Lenders to MIAL are also getting nervous after rating agency Crisil downgraded its bank facilities and non-convertible debentures from AA to A+. The ratings were subsequently placed on "rating watch with negative implications". This was because of the delay in real estate monetisation. Though MIAL has development rights for 194 acres, it has monetised only three parcels totalling around six acres.

While the group has been in talks with select banks to convert debt into equity, and has been talking to private equity investors to take up substantial stake in the airport holding company, the process is time-consuming. And that's precisely what GVK doesn't have at this point — a fact that hasn't obviously escaped the attention of the Adani group.

There is no doubt that the Adani group's dream to become the largest airport player has become the GVK group's worst nightmare.

A flawed minority report

BOOK REVIEW

C P BHAMBHRI

Three academics have examined in detail the problem of accommodating minority rights within the framework of the country's laws and institutions. This is a complex issue, because it is interlinked with minorities' cultural distinctiveness along with their socioeconomic disadvantages and backwardness. So the laws and institutions of governance are expected to respond to not only the demands of cultural, religious, linguistic minorities but also harmonise the interests and demands of groups that suffer from socio-economic disadvantages and backwardness. This study appropriately focuses its attention on the complex story of institutions of governance that attempt to reconcile the cultural distinctiveness of groups and problems associated with their historically inherited backwardness.

The central issue that concerns every plural democracy is the "accommodation" of specific minority groups so that they do not feel left out. The author observes that in India, "Minorities are constitutionally recognised and given clearly defined rights and liberties that in some cases are greater than those of the majority". Indian pluralism, thus, is explicitly recognised by the Constitution, which mandates that the cultural diversities of minorities, whether religious or linguistic, will not only be protected but also celebrated. It is possible to see how Jawaharlal Nehru's dream of "unity in diversity" or M K Gandhi's "composite nationalism" informed the framing of the Constitution.

The authors clearly show that dealing with minority demands is difficult because of the claims of multiple minority groups. "Dealing with minority demands requires thinking and bargaining," they write. The challenge plural democracies face, they add, is "...to develop a public will through a deliberative process which when it prevails is accommodative of the reasonableness of the minority claims". This is wishful thinking on the part of the authors. In reality, minority claims are contested not only by counter-claimants in majority communities but also by "minorities within minorities". The Shah Bano case and the controversy over triple talaq within the Muslim community are cases in point.

Indeed, the very definition of "minority" in a country of millions of minorities has created difficulties. The colonial rulers defined minorities on the basis of religion, depressed groups and tribal groups. Independent India has defined religious minorities as (a) Muslims, (b) Christians, (c) Sikhs, (d) Buddhists and (e) Zoroastrians. It must be mentioned that even these five categories have "internal diversity" and "minorities within minorities".

Chapters 3 and 4 — "Politics of minority accommodation" and "Public institutions for minorities" — provide detailed information about the role of Parliament, state Assemblies, the Supreme Court, high courts and other institutions in resolving claims of minority groups. For instance, the Minority Commission of India was created as a non-statutory body in 1978 and gained statutory powers in 1992-1993. The authors observe that "the policy framework as well as the catalogue of state interventions for minorities have evolved and been shaped over time through many claims and the changing public mood in the country". The list is very long and covers issues such as madrasas, the Urdu language versus the National Educational Policy framework and, of course, "policies of Reservation/appropriation action" for backward classes.

Thus far, the book is reasonably informative. Then in Chapter 5 — titled "Learning from India" — the authors take readers on a short tour of European history and go on to suggest that these nations could learn from India in terms of dealing with complex problems of minorities and the accommodation of culturally diverse groups in a plural society. In the context of the 2014 and 2019 Lok Sabha elections, this observation can only be described as a tall claim.

More optimistic observations along these lines — "as a polity democratises a new politics of groups and interests will emerge" and "the politics of accommodation is based on recognition of cultural differences" — suggest that the authors wrote this chapter in a state of absent-mindedness. It is hard to see how they have overlooked the dominant political discourse after 2014, which has comprehensively bid goodbye to the idea of celebrating cultural differences and replaced it with the "one country, one culture" slogan.

The subject of this study is vital for the future of plural accommodative democracy in India. So it is inexcusable of the authors not to reflect on the changing political context that has created new anxieties among the minorities. The authors have failed to draw the obvious conclusion from their own study: That a certain kind of politics nurtures and nourishes plural democracy and a completely different kind demands cultural homogeneity. Did the authors fail to spot the glaring fact that the ruling party at the Centre did not have any elected Muslim MPs out of the 282 seats it won in 2014 and that the pattern did not change in the 2019 elections? If a significant minority is electorally disempowered by design, the belief that India will always accommodate cultural minorities is a pipe dream.

DEMOCRATIC ACCOMMODATION: Minorities in Contemporary India
Peter Ronald de Souza, Hilal Ahmed, Mohd Sanjeev Alam
Bloomsbury India, 2011 pages, ₹1,299