Opinion

FRIDAY, NOVEMBER 15, 2019

FLIGHT OF FANCY

Union home minister Amit Shah

"Now, it has been proved that disruption of Parliament over #Rafale was a sham... After today's rebuke from SC, Congress and its leader, for whom politics is above national interest must apologise to the nation"

Judiciary takes a step towards transparency

SC allowing CJI to come under RTI a welcome step, but the conditions set must not stonewall queries

THE SUPREME COURT'S (SC's) decision to bring the office of the chief justice of India (CJI) under the purview of the RTI Act, albeit with certain conditions applying, would seem a watershed moment in the judiciary's history given how it has resisted public scrutiny. Coming under the RTI lens will push what has been a notoriously opaque system to share insights into its functioning. That said, the conditions that the judgment sets lend themselves to the apex court stonewalling efforts to dig out particulars that may be of public interest. The verdict leans heavily on the judges' right to privacy, and the independence of the judiciary as touchstones for allowing RTI queries. Justice NV Ramana, a member of the bench that delivered the verdict on Wednesday, also cautions against the RTI becoming a "tool of surveillance" against the court in his separate but concurring judgment in the matter. All this means taking the RTI route to get the CJI's office to give information could prove a Sisyphean task if the SC wills it so. While citizens are allowed to ask for information on appointment and transfer of judges, the reasons behind the decisions may not be shared since these will be based on intelligence inputs by agencies that are exempt from RTI.

The division bench of the SC that heard the appeal against a 2010 Delhi High Court ruling—this had upheld the Central Information Commission's 2009 decision to bring the CJI's office under the purview of RTI—had decided the same year that the matter should be heard by a Constitution bench. Eight years, and nine CJIs later, the bench got constituted last year by CJI Ranjan Gogoi. This itself should be illustrative of the judiciary's lack of appetite for transparency. Indeed, the judiciary has largely refused to explain its decisions on appointments to its upper echelons—recommendation of candidates remains the exclusive turf of the judiciary—even as the government makes public the reasons for not accepting the judiciary's recommendations. Under former CJI Dipak Misra, the reasons explaining the SC collegium's recommendations of appointments were put up on the apex court's website. Under CJI Gogoi, the practice has been dropped. It is hardly a surprise then that controversies, like the one over the transfer of Madras High Court judge Justice VK Tahilaramani that ended with Tahilaramani resigning, dog the judiciary. Against this backdrop, the RTI becomes the instrument that the public turns to force the judiciary to be more transparent. Indeed, as Justice DY Chandrachud, another member of the Constitution Bench that delivered the landmark verdict, writes in his separate but concurring judgment, "Bereft of information pertaining to both the criteria governing the selection and appointment of judges to the higher judiciary and the application of those criteria in individual cases, citizens have engaged the constitutional right to information, facilitated by the RTI Act."

If the CJI's office, and, indeed, the judiciary, is to become meaningfully transparent, the guiding principle has to be what Justice Chandrachud writes in his judgment: "Failure to bring about accountability reforms would erode trust in the courts' impartiality, harming core judicial functions... Transparency and the right to information are crucially linked to the rule of law itself."

In plain English...

...Andhra is right in making govt schools English-medium

THE ANDHRA PRADESH government's proposal to make English the language of instruction in government schools is an idea other states, too, would do well to seriously consider. The move has received flak from nearly all opposition parties in the state, including TDP, which had proposed a similar move, though on a pilot basis, in one district, when it was in power. Even vice-president Venkaiah Naidu, whose mother tongue is Telugu, has weighed in on the side of the critics. However, as chief minister YS Jagan Reddy has argued, making English the language of instruction from the primary level itself will improve the employability of government school students, largely from poor families, given English proficiency is crucial for a large number of jobs.

Reddy's poser to critics—on the language of instruction at the schools where their children and grandchildren were enrolled—may have been rhetorical, but it reveals how much premium is placed on English skills in the job market. Given that English remains the medium of instruction in higher education across India, an early foundation in the language will vastly improve the chances of a student completing their education. With most textbooks and reference material being published exclusively in English—higher education in popular destinations like the US or the UK also calls for demonstrated competence in the language—delaying mainlining of the language in government schools makes the poor even more vulnerable as it skews opportunities in favour of students educated in English-medium schools. Data from the ASER 2017 shows that nearly a quarter of the 14-18 year-olds—over 98% of whom had completed elementary education (school education up to the VIII standard)—surveyed in the state (Srikakulam district) couldn't read an easy sentence in English. ASER 2016 data shows that nearly 30% of Class VIII students in the state who were surveyed couldn't read simple English sentences and, worse, 20% of those who could read couldn't tell the meaning of the sentences. Thus, an early foundation in English would perhaps help improve the lot of students who get left behind because of poor comprehension of the language.

The fear of the critics that a switch to English will mean that the regional languages that are now the medium of instruction—Telugu and Urdu—will get neglected is addressed by the fact that, as the state government has clarified, it will be compulsory for students in government schools to learn either of the two languages. Many experts argue that learning outcomes are likely to be better if early learning is conducted in the student's mother tongue. However, that can't come at the cost of English learning. The government can come up with regional-language reference texts and teaching aids that help the child have a better grasp on classroom teaching, or even have computer-aided learning aids that the students can be trained to use to negotiate English instruction better. But, keeping English away over the bogeys the critics of the Andhra government are raising will be a retrograde move.

Doomed FUTURE

Failure to act on climate will mean debilitating health consequences for children born today

THE WORLD, OVER the last few years, has seen devastating consequences of climate change unravel. With various reports sounding the alarm on consequences—indeed, some warn we might have vastly underestimated them so far—climate action couldn't have seen more urgent ever. Now, a report by The Lancet on the public health impacts of rising temperatures and air pollution provides a set of equally compelling reasons. The report points to several threats, including increased incidence of infectious and vector-borne diseases like dengue, rising food insecurity, undernutrition, and more frequent extreme weather events, it notes that the size of India's population and the stark inequalities in healthcare in the country expose it to the risk of losing the public health gains of the last two decades. India, along with China, is expected to face an increased burden of climate change effects, the worst of which, the report emphasises, will be borne by children being born today.

"A child born today," the report states, "will experience a world that is more than four degrees warmer than the pre-industrial average, with climate change impacting human health from infancy and adolescence to adulthood and old age." Infants would be more vulnerable to malnutrition—already responsible for two-thirds of under-five deaths—and rising food prices. With worsening air pollution and PM 2.5 already having contributed to 5,29,500 premature deaths in 2016, future adolescents are expected to suffer damage to their hearts, lungs, and other vital organs. Extreme weather events, including exposure to wildfires—the exposure of daily population to which the report estimates to be 21 million between 2001 and 2014—is expected to severely limiting labour capacity. The writing has been on the wall for quite some time now—Greta Thunberg is right. A failure to act now will doom future generations.

RIGHT DEAL

THE CAG'S OBSERVATIONS, IN ITS AUDIT REPORT ON CAPITAL ACQUISITION BY IAF, SHOULD HAVE BEEN INTEGRATED IN THE DEFENCE PROCUREMENT PROCESS

Defence procurement delays hurt national interest

KP SHASHIDHARAN
Former Director General, CAG of India
Views are personal

PRIME MINISTER MODI'S second stint has raised many expectations. The relentless encouragement, and enabling policy environment provided by the NDA's earlier regime through a series of reforms gave an impetus to ease of doing business, and ease of living and creating national infrastructure to build a new India. A cost-effective procurement process, along with development of indigenous capabilities, products, and technologies would give our armed forces a decisive edge in defending India's national security, territorial integrity, and sovereignty.

India's armed forces have been facing enormous challenges. Spelling out India's defence operational requirements, and finding solutions to the problems therein would serve as a testimony to the Modi 2.0's commitment. It is time for India's defence minister, Rajnath Singh, to lay down an appropriate policy framework to empower the armed forces to discharge their responsibilities. Valuable lessons can be learnt from the Comptroller and Auditor General of India's (CAG's) performance audit of capital acquisition in the Indian Air Force (IAF), placed before Parliament in February, 2019, to resolve some chronic bottlenecks in the IAF's defence procurement process.

The CAG report examined 11 contracts of capital acquisition signed between 2012-13 and 2017-18, with a total value of approximately ₹95,000 crore. It highlights systemic issues in the acquisition process and gives recommendations to rectify deficiencies in the procurement process. The acquisition process begins with the formulation of user requirements, known as the Air Staff Qualitative Requirements (ASQR). The formulation of ASQR is critical to the defence acquisition process because it determines quality, price, and competition. In a 2007 report, CAG had recommended that ASQRs be stated in terms of measurable functional parameters. However, IAF did not implement this, and made the ASQRs exhaustive with technical details. This led to serious, avoidable consequences—all vendors failed to meet the ASQRs. Moreover, IAF changed ASQRs repeatedly during the procurement process.

The nation's supreme audit institution, mandated by the Constitution to help enforce public accountability, effective service delivery, transparency, and good governance, had no option but to repeat its 2007 recommendation that ASQRs should be stated in terms of functional parameters. Further, CAG recommended that technical experts with knowledge of the systems be involved in the acquisition process.

As required, offers are sought from varied vendors by issuing a Request for Proposal (RFP). Vendors respond to the RFP by giving technical and commercial bids. CAG found that there was limited competition as the number of vendors who responded to the RFP was less than that of those invited to bid. Reasons for this include delays in the acquisition system, and inappropriately defined ASQRs. CAG recommended that the defence ministry consider open, competitive tendering in case of non-strategic items, like basic trainer aircraft and weather radar.

CAG observed a lack of consistency in technical evaluation across procurement cases: In some cases, such as doppler weather radars and attack helicopters, technical bids were rejected when vendors failed to meet all the ASQR parameters; but, in the case of medium multi-role combat aircraft (MMRCA) and heavy lift helicopters, bids were technically qualified even when they did not meet critical ASQRs.

A Contract Negotiation Committee was constituted to evaluate the price bid, and negotiate the final contract. The committee was required to estimate the benchmark price to assess the various bids before opening the price bid. CAG found that in eight procurement cases, the benchmark price was significantly different from the bid price. The report opined that repeated off-mark pricing evidenced inability to estimate the market price.

> **The unwarranted delay, complex procedures and decision-making processes are cost-ineffective. It can lead to the acquisition of technologically inferior armaments**

The central auditor pointed out that delays in acquisition were essentially due to a complex, multi-level approval process; to be precise, each procurement case has to go through 11 stages, from initiation to contract-signing. The current acquisition system is, therefore, unlikely to support IAF's operational preparedness. CAG recommended that the defence ministry structurally reform the entire procurement process to facilitate expeditious acquisition.

CAG examined the procurement process for MMRCA. It remarked that IAF had discarded its original August 2000 proposal to acquire 126 Mirage 2000 II aircraft in 2004, and, in 2007, it decided to acquire 126 Rafale aircraft from Dassault Aviation. However, the commercial negotiations with Dassault were not concluded, and in 2015, the decision was altered to procure only 36 Rafale aircraft through an inter-governmental agreement with France. Comparing these two deals, CAG concluded that the price of the 2015 deal was less than that of the 2007 one by 2.86%. The latter included a bank guarantee from the French government to safeguard the national interest in case of default, making the vendor—the French government—liable to provide payment. However, the 2015 deal excluded a bank guarantee.

The government's defence procurement policies have been subjected to criticism. Enormous delays in the procurement process thwart the urgency in defence procurement. CAG's observations should have been integrated in the defence procurement process. The unwarranted delay, and complex procedures and decision-making process seem to be cost-ineffective. More importantly, it could damage national interest and lead to the acquisition of technologically inferior armaments. India must get value for the public money it spends. It is high time the government, under Modi 2.0, took stock of things with new policy directions on all defence and security related matters, and implement them effectively, optimising the scarce public resources.

IEA's new energy outlook comforts no one

That the World Energy Outlook report has become a battleground speaks to the urgency of dealing with climate change spreading beyond think-tanks

LIAM DENNING
Bloomberg

THE INTERNATIONAL ENERGY Agency would like you to know it is not in the business of making predictions:

The WEO (World Energy Outlook) analyses the choices that will shape our energy use, our environment, and our wellbeing. It is not, and has never been, a forecast of where the energy world will end up.

That the IEA feels the need to put that high in the foreword to its latest long-term energy outlook gets at the problem: To a large degree, it doesn't matter that it isn't prophesying. Because of the IEA's stature, and the fact that not many institutions have the inclination or funding to maintain detailed models of global energy supply and demand—plus our species' preference to just reach for ready-made statistics—the World Energy Outlook tends to be treated as a reference work rather than a mere thinking aid. That isn't the IEA's fault; it is just what happens.

Hence, back in April, a group of investment funds, scientific institutions, and think tanks wrote a letter to the IEA demanding the WEO more explicitly map out scenarios consistent with the Paris Agreement's goal of limiting the rise in temperature associated with climate change. The IEA has met them partway. The old central scenario called "New Policies" has been renamed "Stated Policies," capturing the impact of policy makers' plans rather than assumed improvements. The more ambitious "Sustainable Development Scenario," or SDS, gets more weightage in this edition, while the "Current Policies Scenario"—the embrace-the-fires-and-floods scenario—gets demoted.

The central criticism of the WEO is that it doesn't make a scenario with a good chance of limiting the world's temperature increase from pre-industrial levels to 1.5° celsius (2.7° fahrenheit) its central case. The secondary SDS, which the IEA characterises as being in line with the Paris Agreement, comes much closer than the Stated Policies case. However, while it is consistent with modelled pathways that limit warming below 2° celsius, it still implies overshooting the 1.5° target. Avoiding that would mean getting to net-zero emissions by 2050, according to last year's special report from the United Nations' Intergovernmental Panel on Climate Change.

The SDS, instead, effectively relies on the deployment of carbon sequestration beyond 2050 to correct the overshoot, with the IEA pointing out that many of the pathways surveyed by the IPCC do the same thing. As for getting to net-zero emissions by 2050 without relying on sequestration, the IEA's language is sceptical, to say the least:

The additional changes involved would pose challenges that would be very difficult and very expensive to surmount. This is not something that is within the power of the energy sector alone to deliver. It would be a task for society as a whole, and likely involve widespread behavioural changes.

> **The latest edition of the WEO represents a shift prompted by demands from a wide range of institutions to map out more-rapid pathways to slash carbon emissions**

The IEA is correct: Getting to a net-zero energy system without sucking enormous quantities of carbon dioxide out of the air within the next 30 years is a gargantuan task. Given this, however, surely it would be worthwhile spelling that out in detail rather than condensing it into a qualitative statement?

As I wrote, we should reframe the way we think about dealing with climate change, away from pure "cost" toward a holistic view of investments and rewards—just as we do, in a flawed way, with our current energy systems. After all, the Stated Policies—and, especially, the Current Policies—scenarios would come with enormous costs of their own, in the form of a degraded environment. And, both the IEA and the IPCC acknowledge that carbon sequestration technologies are, at scale, both unproven and potentially unsustainable in their own ways in terms of, for example, land requirements. Scenarios are, as the IEA reminds us upfront, just that, so showing one that may seem unrealistic in a different way from the lack of realism informing our current path couldn't hurt.

It is tempting to view the WEO as a comfort blanket for fossil-fuel interests, but it would be shallow indeed for energy's incumbents to see it that way. Yes, the Stated Policies Scenario foresees continued dominance by fossil fuels through 2040 at least. However, SDS effectively upends the current growth-driven economic model of the coal and oil businesses in the 2020s, and does the same to the natural gas business in the 2030s. Investment in oil and gas production stalls almost immediately and then declines, kicking away the central pillar for a broad-based recovery from the crash.

And this, after all, isn't even the more drastic scenario demanded by the IEA's critics. It shouldn't be lost on today's energy incumbents that the latest edition of the WEO represents a shift prompted by demands from a wide range of institutions, including those representing capital markets, to map out more-rapid pathways to slash carbon emissions.

Even if it leaves some unsatisfied, the very fact that this document, of all things, has become a battleground speaks to the urgency of dealing with climate change, and the way in which that sense of urgency is spreading beyond the confines of think tanks and laboratories—with all the potential that holds for sudden, disruptive changes in policy. As a metaphor for where we're at on dealing with climate change, an 800-odd-page report filled with tables populated by data nerds doesn't seem the obvious choice, but I'll take it.

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LETTERS TO THE EDITOR

One state, multiple elections

Instead of mocking the high chair, political parties must focus on a constructive agenda to attain a common ideological ground, and work hand in glove to render stability to the state. It has become imperative for parties to follow the code of conduct round the year, and not just during the poll process, in order to attract public cheer, and preserve goodwill. An intent to address state issues and maintain a decisive stance on key matters is usually found wanting. Limiting undue expenditures and enforcing discipline is prudent to utilise taxpayer money in an efficient manner. Regulators and the Election Commission must redefine their visibility to combat challenges and maintain decorum and integrity in the political system by demonstrating exceptional skills. Since vested interests of regional parties often conflict with larger goals, multiple elections in a state cannot be ruled out as a possibility in the long term, especially when pre/post-poll alliances are fickle. It is essential to make sure that ideals widely preached are also practised on the ground. Berating peers, disrespecting the larger mandate, questioning the decision making by higher ranks, challenging the credibility and integrity of neutral authorities and expending effort towards non-constructive tasks have emerged as the new norms. Low-benchmarks of performance, seeking attention through ambiguous or bizarre statements, focus on short-term gains and opportunistic alliances cannot be encouraged in the name of a democratic federal structure. To prioritise state interest, instill public-confidence, and accomplish socio-economic objectives viably, a stringent regulatory framework must be established to promote collective accountability within parties.

— Girish Lalwani, Delhi

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MEDICAL DEVICES

Rx: Rationalise trade margins

Importers have been lobbying to be kept outside the purview of trade margin rationalisation. By accepting their demand, the government would be doing a great disservice to the domestic device manufacturing industry

India is ranked 145 among 190 nations, lower than even Bangladesh, Sudan and Equatorial Guinea by the 2018 Global Health-care Access and Quality Index. To change this landscape, we need to provide quality and affordable healthcare and reasonably priced medical devices. In recent times, exorbitantly priced medical devices and medical treatment has caused distrust in the healthcare industry, adversely impacting healthcare business environment. In this context, the government needs to protect consumers' interest as well as allow domestic industry to flourish, while also creating a level -playing field with multinationals. Excessive pricing is stifling India's manufacturing growth story. In the absence of fair competition, reasonable price controls are desirable. One possible solution for ensuring reasonable MRP (maximum retail price) is keeping trade margin at a rational level along the supply chain.

The trade margin is the difference between the price at which the manufacturers (indigenous /overseas) sell to trade and the final price to patients.

The main aim of rationalisation of trade margins in medical devices should be not only to help consumers, but also allow rationalised and reasonable profits for traders, importers, distributors, and wholesalers & retailers, and create a level-playing field for domestic industry *vis-à-vis* foreign manufacturers. There should be clear objectives for any policy intervention to provide quality and affordability and avoid distress (to consumers), distrust (in industry) and disruption (to market). The market place is, unfortunately, skewed where suppliers induce hospitals to buy and push their brands based on profit margins and not on basis of cost savings on the procurement cost by a hospital, thus, spiraling prices of medical devices leads to an artificial inflation.

Importers have been lobbying to be kept outside the purview of trade margin rationalisation. By accepting their demand, the government would be doing a great disservice to the domestic device manufacturing industry. There is a need to tread the line carefully between boosting domestic manufacturing and promoting 'Make in India' or encouraging more imports and promoting 'Make Outside India'. Unless, the anomaly between importers and domestic manufactures is corrected, Indian manufacturing will remain at a strategic disadvantage and India will remain dominantly import dependent.

When it comes to trade margin rationalisation, importers of medical devices should also be included. Aren't MNC importers traders too? How can we have importers having irrational 200% margin as was indicated in NPPA report analysing trade margins on catheters and guide wires, while the rest of supply chain have only 35-50% margin as was being recommended by MNC importers' lobby?

Medical devices usually go through 4-7 change of hands along the supply chain from a distributor to a wholesaler to a retailer and a hospital before they reach a consumer. Each point in supply chain incurs various costs such as freight, inventory carrying costs, rental, salaries, marketing and sales overheads and service and statutory expenses of compliance, and then there is also a need of net profit by a reseller. Everyone in a supply chain has intermediate costs and value addition. It needs to be ascertained what value addition, if any, importers do and what's a rational margin for them. Importers in order to avoid customs duty, argue that intermediate costs like R&D and clinical evaluation are not part of the import-landed price. However they also induce hospitals with higher MRP and higher trade margins. This tactical marketing warfare is highly unethical and has cost the consumers dearly as well as adversely impacted domestic manufacturers.

For sake of parity and level playing field, the policy needs to equate an overseas manufacturers' first point of sale at which their goods enter the Indian Union on CIF (Cost, Insurance & Freight) import price basis with the ex-factory price of the Indian Manufacturers. GST is applied for the first time on the first point of sale for both India and overseas manufacturers.

The Government may consider to cap trade margins along entire supply chain of specific devices to a maximum of 85%. This will help in reducing MRP of many medical devices to less than half of current prices while not being unreasonably detrimental to traders and hospitals. Additionally, manufacturers will be encouraged to attract clients on competitive features, and hospitals will start buying on evaluating cost of purchase & quality, instead of considering margins to be made on higher MRP.

Based on evidence of successful price caps of stents, the Government must proactively make cohesive, industry-friendly policy giving at least a level playing field, if not a strategic advantage to domestic manufacturers while safeguarding consumers. Devices are not Drugs though both are medical products but differ in approach in marketing - any move to bring in Trade Margin Rationalization that's based on PTS (Price to Stockist) instead of first point of sales (when goods enter India), may not meet objectives "to boost domestic manufacturing, end exploitative MRP & unethical Marketing"

Government should define following:

a) First Point of sale for Manufacturer is Price on which GST is charged first time. On an overseas manufacturer GST is charged on Import CIF landed price in bill of entry, whereas on an indigenous manufacturer GST is levied on the ex-factory price post discounts

b) Indigenous manufacturer should be equated with overseas Manufacturer and not with importers.

Price controls can be done in a calibrated manner through,

- 0.5 - 1% GST Cess on MRP as a tax- based disincentive;
- Capping trade margins; &
- Price caps on few priority devices.

There is an urgent need for the government to move towards ending over 80% import dependence, expedite steps for patients' protection, stronger quality & safety regulations, judicious price controls to make medical devices and quality treatment accessible and affordable and promote indigenous manufacturing.

Also, there is a need to counter attempts to spread mis-information *vis-à-vis* any kind of government policy to control prices of medical devices. When MRP prices or trade margins are capped the manufacturers margins are not impacted, so fear mongering regarding detrimental impact on quality and innovations in medical devices on account of price control policy stipulations will not be in the interest of consumers or domestic manufacturers. Such misinformation by any particular lobby should be discouraged and countered effectively.

Resolving bilateral tax disputes

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Views are personal

OECD lays down a roadmap for India to make bilateral taxation efficient

TAX TREATIES PROVIDE for the mutual agreement procedure (MAP) through which the competent authorities (CAs) of the contracting states may resolve differences or difficulties regarding the interpretation or application of the tax treaty on a mutually-agreed basis. In recent times, MAP has emerged as a preferred option for resolving transfer pricing (TP) controversies and other double taxation issues as it minimises risks of uncertainty and provides an effective and timely resolution.

On October 24, OECD released the sixth batch of peer review reports (the Report), for eight countries including India, relating to the implementation of the BEPS minimum standard under Action 14 (making dispute resolution mechanisms more effective). The peer review process assesses a member's legal and administrative framework to determine how its MAP regime performs relative to the four key areas: (i) preventing disputes; (ii) availability and access to MAP; (iii) resolution of MAP cases; and (iv) implementation of MAP agreements.

The report provides interesting insights into the positions adopted by the Indian CA while granting MAP access. India provides access to MAP in all TP cases and cases concerning application of treaty anti-abuse provisions. However, it does not provide access to MAP for issues that do not give rise to double taxation, cases involving advance tax rulings and settlement commission. Further, for cases concerning the domestic anti-abuse provision, discussions during the MAP will focus on elimination of double taxation.

The Report indicates that the experiences of the peers in handling and resolving MAP cases with India is generally positive and affirms India's commitment to make dispute resolution under tax treaties an effective and efficient process. A few peers note the difficulties in resolving case, particularly the long time it takes to reach an agreement. The peers attribute this to the lack of resources on the Indian side. It is noted in the report that MAP cases in India were not closed within 24 months (which is the pursued average for resolving MAP cases received on or after January 1, 2016). The peers recommend that India should hire additional personnel to ensure that MAP cases are resolved in a timely and efficient manner.

> **Indian tax adminsitration would need to strengthen the teams overseeing MAP/APA cases by providing additional resources**

The OECD recommends that India should without further delay introduce clear and comprehensive MAP guidance. Further, it also recommends that India should change its policy to effectively allow access to MAP for issues concerning the question of whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty and on matters where there is no double taxation but there is taxation that is not in accordance with the provisions of a tax treaty.

In a post-BEPS world, MNCs face tremendous pressures and scrutiny from tax authorities. In the Indian context, given the challenges with the domestic tax law appeal process, MAP would continue to be a preferred option for resolving TP disputes. The Report reinforces India's commitment to make dispute resolution an effective and efficient process. Considering the recommendations of the OECD, the Indian Tax Administration should issue detailed MAP guidance providing information on India's approach to key issues in MAP and corresponding expectations of treaty partners. Further, the Indian Tax Administration would need to strengthen the teams overseeing MAP/ advance pricing agreement (APA) cases by providing additional resources for the efficacy of MAP/APA programme. These measures will strengthen the effectiveness and efficiency of MAP and taxpayers would find the forum more attractive. Peer reports must be reviewed to get a sense of the policy considerations and country positions while developing their MAP and APA strategy for effective dispute resolutions.

With inputs from Shweta Pai, senior tax professional, EY India.

WOMEN & EMPOWERMENT

Breaking the glass ceiling

Systematic engagement of women in enterprise is the key to achieve the $5 tn target

ANNA ROY
Senior advisor, NITI Aayog

A PATH-BREAKING 2010 McKinsey study, "Women Matter", found out that companies with a higher proportion of women in leadership positions posted about 41% higher returns on equity, and 56% better operating results. This revelation is yet to make an impact on the Indian ecosystem, where the ground realities are quite different. As per the 2018 Mastercard Index of Women Entrepreneurs (MIWE), only 11% of businesses in India are owned by women. Additionally, the index specifically identifies India as a country where the opportunities available to women to become business leaders or professionals, are the least. Out of the 57 markets which were evaluated, India ranked a dismal 52 in the MIWE. VC funding for women-led enterprises has been one of the biggest challenges, both globally and even more so in India, with less than 20% of all the VC investments across the globe directed towards women-led startups. Besides, all-male startups are 4x more likely to get funding.

Systematic engagement and involvement of women in enterprise can be a key strategy in helping India realise its larger economic aspirations. However, for this to be effectively approached, the challenges of the Indian landscape need to be addressed without falling into the 'business-as-usual' trap.

Gender inequality goes beyond the sphere of enterprise and is deeply entrenched in India's traditional socio-economic power structures. Some of the common challenges faced by women are social barriers delimited by patriarchy (such as lack of family support), lower access to finance and networks, safety concerns, and resultant lower-confidence. Additional deterrents to female participation include the absence of successful precedents, lack of education, and unequal distribution of domestic responsibilities (women are expected to be the primary homemakers and caregivers). Women are not only denied access to financial capital and networks with potential partners, but are also subjected to the reality of unsafe work environments and discriminatory industry practices. These conditions directly inhibit the participation of women in entrepreneurship and as per studies also result in the low labour workforce participation.

In the larger scheme of things, India's $5 trillion economy vision will be possible only when women are actively brought into the fold. This will require the glass ceiling to be broken, and will necessitate its complete dismantling. The challenges can be addressed with a careful, conscientious and diligent review of the existing conditions. While some of these challenges are inter-generational and improvements will require larger societal behavioural change over time, others can be implemented in a short span.

Gender gaps in economic participation and missed opportunities can be addressed with strategic policies and programmes, curated to address the existing inadequacies. There are efforts underway to better understand these factors through initiatives, NITI Aayog's Women's Index for Socio-Economic Opportunities, which will be used to develop actionable policy interventions, at the state and central levels. For women entrepreneurs, who are able to overcome the typical social challenges, the barrier to entry still remains high. Besides the government efforts, there are numerous initiatives by private sector aimed at promoting women entrepreneurship, including corporates, PSUs, financial institutions, civil societies, international organisations.

Despite the substantial government and private initiatives, women who actually need these services are not able to benefit due to information asymmetry. Thus several of these initiatives and programs often remain under-subscribed, as beneficiaries can't access information timely and methodically. At the same time, women entrepreneurs continue to face business-compliance issues without the correct information or access to services that makes enterprise seem unnecessarily prohibitive even though these are easily addressed by making the right information available. Women entrepreneurs often miss out on the right kind of mentoring support in addition to other challenges.

Women Entrepreneurship Platform, a flagship initiative NITI Aayog was announced by Amitabh Kant, CEO, NITI Aayog at the conclusion of Global Entrepreneurship Summit in 2017, and was launched on March 8, 2018 as an aggregator platform that brings together all relevant information required by existing or prospective entrepreneurs in their quest to establish and promote their enterprise. WEP adopts a multi-pronged approached to address critical needs of a women entrepreneur, such as access to networks, information, learning resources, services and mentoring by sharing information seamlessly. The gap of not showcasing effectively women role models is also being addressed through efforts made to recognise the efforts and achievements of women entrepreneurs through awards such as the Women Transforming India Awards.

Indian society is at the cusp of change, and the role of women is one that is radically changing. There has been a slow but steady rise of women's agency and autonomy, and as a result there has been all round positive change. But the most impactful changes are yet to come, as women slowly take up their rightful place in building India's economy. Programs and initiatives like WEP can champion the cause of women, thus taking the lead in ushering in a new India.