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*"The reformer has enemies in all those who profit by the old order and only lukewarm defenders in all those who would profit by the new."* Machiavelli in *The Prince*

## Number Portability: All About Choices

The mobile number portability (MNP) policy has been a hot issue of debate among operators as well as industry experts. No doubt it will affect the market share of few operators. However, in the end, consumers will be benefited by improved quality of service and lower tariffs. Initially, MNP will be implemented in all the metro cities: Delhi, Mumbai, Chennai and Kolkata on a trial basis by the fourth quarter of 2008, and in the second stage, it will be extended to the rest of the country.



This move by the Government is expected to promote healthy competition by providing consumers with a choice of service providers as has been argued in the recent study: "Competition & Regulation in India, 2007" done by CUTS with the assistance from the British High Commission, New Delhi. Once MNP is in operation, a consumer will be able to switch his current service provider without losing the number within the same service zone. Presently, if consumers wish to change their provider, they will have to surrender their number and thus get into the rigmarole of notifying all their contacts.

Why would a consumer want to change his service provider? The answer is very simple. This is because either the quality of service is poor or the charges payable are not competitive, or both. However, the practice of retaining the same phone number compels the subscriber to stay put with the existing service provider. Undoubtedly, change of phone number will impose certain switching costs etc. With the launch of the new MNP policy, operators will have to compete with each other to retain the existing subscriber base, and attract new consumers, thus improving the quality of service and reducing the tariff.

On the basis of international experience, it is reasonable to assume that MNP will promote competition to benefit the ultimate users. Consumers have benefited in many countries, including US, Canada, and most of the European countries. Recently, Sri Lanka and Pakistan have also launched the MNP. Experiences of these countries reveal that the introduction of MNP has forced the service provider to improve quality of service and adopt cost cutting strategies.

According to statistics, a larger number of subscribers changed their service providers in all the above-mentioned countries. In the first year in the US, about 8 million customers shifted from their current service providers. However, the churn rate in Pakistan was reported to be very low, 0.14 percent during the last 8 months. But it was reported somewhat higher in Australia (0.82) and UK (1.5). It shows that churn rate was not as high as expected because the companies woke up to provide quality service to retain their existing subscribers.

COMMUNICATION

Cell Towers be Banned

Telcos may soon be banned from putting up cellular towers near schools, hospitals and the rooftops of large residential buildings. This is because, with India's record cellular growth leading to rampant mushrooming of cellular towers in its cities and towns, the country has now decided to put in place safety guidelines to limit public exposure to radio waves from base stations.

The norms will also mandate that all handset manufacturers specify the specific absorption rate (SAR) – which specifies the amount of radio waves (radio frequency energy) absorbed by the body when using a mobile phone. This will put India among select countries which have guidelines in place to provide protection against health effects from radiation. Most handset makers already provide the phone's SAR value in the user manual accompanying the handset.

At the same time, it must also be pointed out that globally there is no evidence so far to prove that radiation from cellular sites poses health risks to the general population.

(ET, 23.11.07)

Internet Television Protocol

The Telecom Regulatory Authority of India (TRAI) has suggested that both telecom and cable TV operators should be allowed to offer Internet Television Protocol (IPTV).

In a draft recommendation, the telecom regulator has said that the Cable TV Act should be amended to allow broadcasters to provide signals to all distributors of TV channels such as cable operators, multi-system operators, direct-to-home operators, headend in the sky operators and IPTV service providers.

The TRAI recommendations came in the wake of questions being raised as to whether law governing cable TV permit IPTV services. Earlier, the telecom regulator had suggested that IPTV should be kept out of the purview of broadcasters and instead

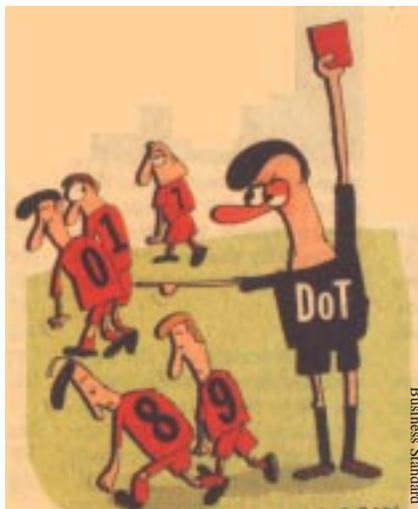
Divided over Key Policy Issues

It is not just the mobile operators who are at loggerheads with each other; the Department of Telecom (DoT) and the Telecom Regulatory Authority of India (TRAI) are also divided over key policy issues.

TRAI has shot off two letters to the DoT pointing out that the policy decisions were contrary to its recommendations. The telecom regulator said that as per its recommendations, 3G mobile services did not require a new licence but was allowed under the existing unified access services licence.

TRAI also pointed out that it had come to know of the Government's decisions through a press release and had not received any official communication from DoT informing them of the policy decision. The telecom regulator has also expressed its opposition to auction 10 Mhz spectrum per operator for 3G mobile services. TRAI said that it was in favour of allocating only 5 Mhz per operator as it would enable more number of operators to compete.

(BL, 21.11.07)



Business Standard

allows only telecom players to offer the service.

However, this was objected to by the cable operators on the grounds that the service was essentially involving broadcasting and not telecommunications. TRAI subsequently withdrew its recommendations and has now issued fresh draft guidelines to accommodate the interest of broadcasters.

(BL, 28.11.07)

Telecom Rules Flouted

Almost 80 percent of telemarketing firms continue to pester thousands of subscribers in blatant violation of telecom regulations. An Indian telemarketing company makes 20 to 25 calls per 'seat' (operator) and most of these companies have a minimum of 20 to 25 employees who work in shifts.

Telemarketers sell services for everything from mobile phones to credit cards and bank accounts. From October 12, 2007, it has become mandatory for telemarketing companies in India to register with the recently-launched National Do Not Call Registry (NDNC).

The TRAI has authorised service providers to either penalise errant telemarketers with a fine of Rs 500 per unsolicited call or disconnect their lines following subscriber complaints.

However, with the regulator not fixing a deadline for registering with the NDNC, the menace is expected to continue for a while. A TRAI official confirmed that unsolicited calls were being made by telemarketers and that it was receiving complaints from customers.

The regulator is also considering making norms stricter for telemarketing companies, while it would also double the current fine per unsolicited call to Rs 1,000.

(BS, 01.12.07)

TRANSPORT

Flight Delays to Cost

The Government now plans to penalise airlines whose flights are delayed. It would conduct a flight delay study within a month and impose fine on the airlines failing to take off on time.

If a flight is delayed, it means it is not taking off at the time slot given to it and uses someone else's slot. This causes delay to other flight and has a cascading effect. Due to delay of one flight the whole bunching happens at airports in the peak hour.

While the Government holds airlines responsible for delays, airlines on their part attribute frequent delay to security and late air traffic controller (ATC) clearance.

Flight delays, generally, take place due to long turnaround time of the aircraft at its origin, technical snags in the plane and unavailability of pilots and crew. *(ET, 12.10.07)*

### Luxury Tourist Trains

After allowing private participation in container trains, the Railways may soon allow corporate houses to operate their own luxury tourist trains. Proposals from the Oberoi Group, Rajasthan Tourism, world famous luxury rail service Oriental Express and Cox & Kings are being considered by the Railways under the proposed initiative.

So far, the Railways runs only the Palace on Wheels (POW) under a joint venture where it holds 49 percent equity. Wholly-owned private luxury trains would be first such venture. The Oberois are also in talks with Indian Railways Catering and Tourism Corporation (IRCTC) to form a joint venture JV and run a luxury train in the Rajasthan circuit. *(ET, 11.10.07)*

### Expressway at Snail's Pace

The Government's ambitious Golden Quadrilateral (GQ) project to build 5,846 km of roads has so far seen the original project cost escalating by Rs 12,000 crore at 1999 prices.

The project was estimated to cost Rs 60,000 crore. The additional cost has been largely because of rising input costs and interest burden.

In September 2007, only 12 km of new roads was built under the project – that means a rate of progress of less than half a km a day.

The GQ was launched in 1999 as the first phase of the National Highway Development Programme. It envisaged 5,846 km of four- and six-lane express highways connecting Delhi, Mumbai, Chennai and Kolkata.

While the time overrun is a major contributor to the escalation in prices, experts say that since 2005, input prices have also gone up by 20 percent. *(FE, 06.11.07)*

### Maritime Policy in Doldrums

More than three years after the Ministry of Shipping proposed formulation of a National Maritime Policy (NMP), envisaging measures like setting up a directorate general of ports, the proposal is yet to see the light of day.

The Ministry had, suggested a Rs 500-crore fund for inland water transport and development of national sea highways along coastlines. The draft of the policy was

put up on the Ministry's website in August 2004.

After inputs from various stakeholders, a modified draft was posted on the site in February 2005. However, views are still being sought, and the final draft has not yet been prepared. Till this is done, the policy cannot be placed before the Cabinet.

The Government had, proposed a slew of measures, like a plan to develop national highways along coastlines to solve the problems of dredging and inadequate draft availability at Indian ports.

The policy also suggests a dredging policy for inland water channels. *(BS, 17.12.07)*

## OIL & GAS

### Plan Outlay for Energy

The Ministry of New and Renewable Energy has proposed an outlay of Rs 10,460 crore for the 11<sup>th</sup> Plan period for development of new and renewable energy in the country.

According to the Ministry, renewable energy sources exploited so far in the country are solar, wind, small hydro and bio energy.

The Ministry said that though the potential is based on surplus agro residues, in practice there are several barriers in collection and transportation of such agro residues to the generation site and biomass power generation units prefer to use fuel wood for techno economic reasons.

## Multiple Airports Pose Competition

The chances of private airport operators such as the GMR and GVK groups facing competition became stronger as the Government's plan to allow multiple airports in metros has found support from the Parliamentary Consultative Committee (PCC) attached to the civil aviation ministry.

Members of the panel have called for a revision of the existing airport policy to allow multiple airports at metropolitan cities. The panel stressed that multiple airports would be required in the major cities as the civil aviation sector is booming.

While the move is in line with the Government's agreement with the operators of the upcoming airports, it has largely been opposed by the airlines.

The airlines feel multiple airports in a city means competition between the operators and, hence, reduction of landing and parking charges for them. *(ET, 15.11.07)*



The Ministry has made it clear that not all of this renewable energy potential may be suitable for grid interactive power for technical or economic reasons.

Further, estimate excludes potential for solar power, which is dependent on future developments that might make solar technology cost competitive for grid interactive power generation applications.

(ET, 28.11.07)

**Showing Authority to Operate**

The Petroleum and Natural Gas Regulatory Board (PNGRB) has asked gas distribution companies like *Indraprastha Gas* and *Mahanagar Gas* to show the Government authorisation by which they began retailing CNG and piped gas in cities like Delhi and Mumbai.

PNGRB Chairman has asked all existing city gas distribution companies to show the central authorisation or else seek fresh mandate from the regulator.

The regulator said incase the entities plan to operate for more than three years their exclusivity in a particular city would be just for three years starting October 10, 2007, after which they would be open to competition.

Further, the regulator would invite bids for about 200 cities for setting up city-gas distribution projects by mid-January 2008. Cities in all southern and western states would be put on offer first.

(HT, 29.11.07)

**Introduction of Merchant Mining**

The industry expects the new National Mineral Policy to introduce the concept of merchant mining and suggest the phasing out of captive mining.

The changes are expected to be incorporated in the Bill that seeks to amend the existing mining laws. Kastia, Chairman of the Confederation of Indian Industry's (CII's) national committee on mining, said that the CII had proposed to the government that it allow the resource sector to "develop on its own right".

According to Steel Ministry sources, the draft Bill based on the Hoda Committee's recommendations, is likely to be tabled in Parliament during the Budget Session.

(FE, 23.11.07)

**Energy Sector Needs US\$500bn**

"India's energy sector would require US\$500bn worth of investments during the 11<sup>th</sup> Five-Year Plan period", said RV Sahi, former Union Secretary, Ministry of Power.

The Indian power sector group companies have achieved 154 percent growth in market capitalisation indicating phenomenal amount of investors' confidence.

Quoting an international banking group, Sahi said the power sector companies have grown by 19 percent during 2006, compared to 16 percent in 2005.

The growth cycle turned from negative to positive during 2002-03 and since then it is growing continuously. The utility power which is produced by the State Electricity Boards along with the private sector IPPs is at 1.35 lakh MW and is expected to touch eight lakh MW in the next 25 years.

(BL, 10.12.07)

**POWER**

**Compulsory Energy Audit**

The Government is all set to make energy audit compulsory and wants to reign in the unwanted power consumption as well as the transmission and distribution losses. The auditing will start with power distribution companies followed by high end consumers and finally end up with low end consumers. The move is aimed at making the country a power-efficient country and to accelerate the reforms in the power sector.



The Hindu Business Line

**Not Bound To Pay Interest**

The Supreme Court has said that State Electricity Boards (SEBs) are not bound to pay interest on security deposits collected from large industrial customers.

Setting aside an order passed by the Bhopal High Court, the apex court said that there is nothing in the Electricity Act or Schedule VI of the Supply Act that mandates interest payment on such security deposits.

SEBs take security deposits as advance payment for consumption charges from large industrial consumers. This deposit is revisable from time to time on the basis of average consumption over a period.

The Court said that electricity boards are a state within the meaning of Article 12 of the Constitution of India. The boards are different from licensees. Each of the boards has framed its own terms and conditions of supply.

For purchase and supply of electricity, the board needs finances. It takes loans from various financial institutions and often makes advance payments without it being paid any interest.

(ET, 15.11.07)

Besides making energy audit compulsory, the Planning Commission has suggested various other measures to improve energy efficiency like reaping daylight savings, promoting solar hot water systems, implementing time-of-day tariffs and instituting efficiency audit programmes.

The Commission has strongly suggested for changes in government policies to promote energy efficiency in power equipment purchases, fuel efficient vehicles and emphasis on urban mass transit systems.

(ET, 07.12.07)

**Penalty for Power Overdrawl**

The Central Electricity Regulatory Commission has proposed a congestion charge on states of the northern region resorting to overdrawng power from the newly interconnected central grid.

The congestion charge would be 300 paise per unit for overdrawl, underdrawal as well as over or under injection for all grid constituents of the northern region. This would be added to the notified frequency-linked unscheduled interchange rate prevailing from time to time.

The order would be effective from November 19, 2007, and would remain in force for three months.

“If the state utilities do not exercise the necessary self-control, major grid disturbances in near future are very likely, and hence it has become imperative to introduce a commercial signal to reduce overdrawls and increase generation on the downstream of congested transmission corridor”, the order said.

(BL, 13.11.07)

**Carrot and Stick Policy**

The Government, concerned over delays in commissioning projects, is planning to set up a project monitoring panel that would undertake regular auditing of projects and compare their performance against milestones set.

The Power Ministry has mandated Power Finance Corporation (PFC) to set up the panel that would also provide regular feedback to the power ministry.

The monitoring panel would empanel consultants for undertaking regular evaluation of power sector projects including transmission and ultra mega power projects (UMPP).

The need for the panel has been felt in the wake of numerous project delays that have resulted in the Government missing out on targeted power capacity addition in earlier Five Year Plans.

The PFC’s new panel would appoint consultants for different areas of the power sector including thermal, hydro-electric, transmission and finance.

**Banks to Adopt ‘Humane’ Approach**

Following several complaints from bank customers, industry watchdogs and NGOs, the Finance Ministry has asked banks to adopt a ‘humane’ approach while recovering bad loans.

The Finance Ministry has been receiving several complaints and presentations on illegal and coercive ways, including harassment and use of muscle power, adopted by the agents appointed by banks to recover bad loans.

The Ministry has asked banks to co-ordinate with the Government and use adequate ways to recover their loans.

Recently, acting on preliminary information that in some cases banks have charged interest rates of 30-50 percent on personal loans, the Maharashtra Government had directed the state police to probe if the rates of interest charged by banks on such loans were as per RBI norms.

The Maharashtra Government had even warned that cases could be registered against bank officials under the ‘vicarious liability’ principle.

(FE, 02.10.07)



The Financial Express

It would point to any deviations and also suggest ways for speedier completion of projects, including recommending and facilitating additional financial support.

(ET, 26.10.07)

That strategy pursued earlier has been jettisoned and the bank is now scouring for opportunities for a bigger fit.

(ET, 25.12.07)

**MIXED BAG**

**SBI’s Mega Merger**

The country’s largest bank, State Bank of India (SBI), is set to further consolidate its position as a local banking behemoth with the Government and the bank management putting on fast forward a proposal to merge its associate banks with the parent.

The mega merger, which has been in the making for a long while, will consolidate SBI’s leadership position in the Indian financial sector by giving it more size and reach in the form of deposits and branches.

It will also add muscle to the bank to engage in a more active role on the global banking stage. So far, its global ambitions have remained unfulfilled with acquisitions limited to a few small banks.

**Health Insurance Norms**

The Insurance Regulatory and Development Authority (IRDA) said it planned to come out with separate guidelines for the health insurance players soon, aimed at comprehensive medical insurance coverage and redressal of consumer grievances.

“To handle a plethora of issues relating to health insurance with focused attention, a separate health unit has been set up in the authority, specialised resources have been inducted to strengthen the role of IRDA in the development and better conduct of health insurance business”, said IRDA.

Further to increase the penetration of health insurance in the country, IRDA had also recommended to the government to bring down capital requirements for standalone health insurance companies to Rs 50 crore from Rs 100 crore earlier.

(BS, 30.11.07)

# We Have Got the Target, How Do We Get There

– Vinayak Chatterjee



**The Planning Commission's projections for the 11<sup>th</sup> Plan set out the rules for the game. It's a tough match ahead**

On September 24, 2007, the Planning Commission released a 'consultation paper' entitled "Projections of Investment in the Infrastructure during the 11<sup>th</sup> Plan". The 11<sup>th</sup> Plan runs from April 01, 2007 to March 31, 2012.

Overall, the Paper is to be commended for three reasons:

- It provides a formal response to the persistent demand of having an economic framework within which discussion and debate on infrastructure investments should happen. More notably, it provides the first official view on Gross Capital Formation in Infrastructure (GCFI) in India's economic history.
- It grapples with the funding for meeting the GCFI target.
- It seeks to factor in private sector investments as part of a national planning exercise.

The consultation paper provides the following seven perspectives:

- In a top-down estimate, it postulates an investment target of US\$488bn. In a bottoms-up exercise it arrives at a figure of US\$492bn. So, for all practical purposes, it can be converged at the mid-positions of US\$490bn.
- Assuming the gross domestic product (GDP) growth rate to be 9 percent throughout the period, it postulates that the GCFI, as a percentage of GDP, will move up from 5.75 to 9 percent to arrive at an 11<sup>th</sup> Plan average of 7.5 percent.
- It predicts that the private sector share of total investment will increase dramatically from an estimated 16.9 percent in 2006-07 to levels of 31 percent by the end of the plan period, to hit an average of 30 percent for the whole period.
- Of the total public expenditure of US\$347bn, it takes a clear position that states will have to contribute 43 percent to the kitty.
- It provides the first official aggregate of sector-wise investments as shown in table 1.
- Of the US\$347bn of public expenditure, it provides that US\$98bn or approximately 28 percent of public expenditure would go towards rural infrastructure.
- It attempts to look at funding mechanisms and options to finance this whopping US\$492bns.

At first glance, a GCFI of 7.5 percent across the 11<sup>th</sup> Plan period looks disappointing. But realism takes over quickly as one comes to terms with the staggering US\$490bn required even for this. So, with realism tempering desire, the Planning Commission's GCFI targets should be adopted all around as the national target.

The "bottoms-up" approach appears more an arithmetical justification for the elegant top-down number. To illustrate, the sector-wise list does not have a head called "Urban Infrastructure". It has US\$49bn earmarked for 'water supply and sanitation'. The best estimate one is aware of comes from Ramesh Ramanathan of Janaagraha. He reckons that the appropriate thumb rule is Rs 50,000 per capita of urban population. Using this estimate, investments in urban infrastructure are to the tune of US\$348bn, possibly over the next 15 years-or, say, US\$116bn in the 11<sup>th</sup> Plan period. Where is this amount in the bottoms-up estimate?

It is not enough to have a target GCFI. It must be monitored on a regular basis. The Planning Commission is strongly advised to push the *sarkari* statistical establishment to ensure that GCFI actuals are disseminated on a quarterly basis, much like GDP figures. A national fever without a thermometer is quackery!

In August 2004, soon after the UPA Government was sworn in, the Prime Minister announced a slew of measures including "revamping the regulatory framework". The Planning Commission's Paper provides no inkling of the action in this area. It merely hopes that large dollops of private capital will materialise by the mere mention of a "credible regulatory structure".

States have to contribute 30 percent of the total kitty and 43 percent of all public expenditure. But nowhere in the Paper is there any fresh thinking on a revamped fiscal compact between the Centre and states to achieve this.

Finally, all plans are about making choices-accepting some and rejecting others. As a nation, we have some tough choices to make in the infrastructure arena; road versus rail, minor versus major ports, rural over urban, fiscal prudence *vis-à-vis* relaxing the fiscal deficit to fund hard infrastructure and the like. These choices are rooted in political economy. Other than a cursory reference in the conclusion section to issues like efficiency, improvement in public services and rational user-pay charges, the Paper steers clear of suggesting any 'hard' policy interventions and, seeks comfort in laying out the numbers.

But that may well be the current reality – the importance of arithmetic and numbers, whether in Parliament or the Planning Commission!

– Chairman of Feedback Ventures. He is also the Co-Chairman of CII's National Council on Infrastructure. Abridged from an article that appeared in the Business Standard, November 19, 2007.

# Caught in Air Pocket: Rid Aviation Policy of Old Concepts

– S P Ketkar

The Air Corporation Act was passed in 1953 and nine loss-making airlines were nationalised to create Indian Airlines and Air-India for running domestic and international services, respectively from then onwards civil aviation in India was an absolute monopoly of the Government until introduction of private air taxis in a small way in September 1990. It was in 1992-93 that the sector experienced a rapid increase in demand for domestic travel and the expansion by private operators to grow up like scheduled services. This eventually led to repeal of the Air Corporation Act and removal of the Government monopoly on scheduled air services in 1994.

Post liberalisation, this sector witnessed quite a few entries, exits and mergers of various airlines. Airports infrastructure improved and the number of Indian aircrafts crossed the 300 mark. Low cost airlines started flying high and their competitive fares brought flying within common man's reach. We entered into many bilateral agreements and also allowed the private airlines to operate international sectors under the open sky agreements with the South Asian association of Regional Cooperation (SAARC) countries.

As per the Economic Survey 2006-07, the past three years have been a period of record growth for our civil aviation. During April-September 2006, domestic traffic recorded a growth of 45 percent and international traffic 16 percent. Given these positive effects of liberalisation, any attempts at restriction airlines international flying by artificial barriers such as minimum fleet strength of minimum experience of domestic operations remind one of the concepts of pre-liberalisation era and can only harm the sector.

Agreed that international sectors are available to airlines only to the extent that their parent nations have



***There is scope to improve utilisation of India's air service agreements by encouraging the private airlines to fly international sectors rather than restricting them on arbitrary conditions.***

negotiated and exchanged "freedom of the air" as part of air services agreements (ASAs) signed. Each ASA define the frequency of flights, type of aircrafts and equivalent seats allowed, designation clause and the locations in each country that can be serviced. As on date, we have ASAs in place with 100 countries. The ASAs are divided into four groups.

Group 'A' has countries that operate flights to India and India also operates services to each of these countries. Group B & C are those where either India or the other country operates flights and group D is the list of ASAs not being exercised by either country. This means that India is not using the freedoms exchanged with 64 countries. Even the countries that India fly to, it is not fully utilising the capacities negotiated in the ASAs.

Further, in India, there is already have a well defined set of requirement each airline must fulfill to be able to operate a domestic carrier.

First, the airlines must have the aircrafts registered in India with current certificate of airworthiness.

Second, it must have three sets of crew per aircraft holding licenses issued by Director General of Civil Aviation DGCA with appropriate endorsement on the type of aircraft operated.

Third, airline must have adequate number of aircraft maintenance engineers (AMEs) of its own for basic maintenance and the repairs beyond must be carried out at the set ups approved by DGCA.

In addition to these, there are a series of operational and general requirements in terms of documentation, reporting and training that the operators must comply with. If we believe our screening and evaluation processes are rigorous and reliable enough to license and airline within India, there is no reason to apply any artificial conditions for permitting that airline to operate on international routes.

An airline licensed to fly Delhi-Trivandrum is also capable of operating Delhi-Dubai sector from the very first day, irrespective of its fleet strength. We only need to expand our domestic evaluation process to cover additional requirements of international flying. This means that the aircrafts must be airworthy of required long haul flying, airlines must train its crew for handling technical, regulatory and procedural requirements in relevant countries and airlines must tie up adequate arrangements for aircraft maintenance. We already follow a similar process for approval of outbound inclusive tour packages and we merely need to extend to scheduled airlines.

Aviation policy must drop all concepts of pre-liberalisation era and encourage the domestic airlines to fly abroad for better international connectivity and improved utilisation of ASAs.

– An Alumnus of IIM-B. Abridged from an article that appeared in *The Economic Times*, October 29, 2007.

# Elementary, Dear Policymaker

– Ramrao Mundhe



***If the Government restricts the entry of big retailers, both foreign and domestic, to the Indian retail arena, it would be bad economics.***

Promoting competition in a sector is important for its efficient functioning, sustainable growth through innovation and consumer welfare. It has been evident that encouraging competition by allowing easy entry into and exit from a market is good for growth of that sector in particular and the economy in general.

With their large operations, big retailers benefit from economies of scale. Given healthy competition, each firm tries to make products available at the lowest possible prices. This would induce retailers to buy agricultural products, for example, directly from farmers. For this, they will establish their own chains for such purposes to minimise cost. By thus eliminating middlemen in the supply chain that are responsible for the sector's well-documented inefficiencies, they help the entire sector turn more efficient and competitive.

This process will ensure that products are available at lower prices in comparison with what the consumer is paying at her local small retailer at present. The money saved by the consumer would again go into the economy, either in the form of savings or expenditure. This, in turn, would spur economic growth.

As the retail sector matures, new possibilities of investment in cold supply chains for agricultural products will be opened by retail agencies to cater to growing market demand. Such cold supply chains will help bridge the current gap between marketable surplus and marketed surplus in the agricultural product sector. Wastage in transit will fall sharply, and prices will even out across large geographies. Given India's climate, the advantages of modern cold chain infrastructure can't be understated. Of course, the assurance of sustained power supply is critical to the success of cold chain networks. This represents a big challenge for the government.

Many have argued that if the retail sector is opened up to big business, millions of small retailers – and estimated 12 million in all – would face unemployment.

Since retailing for most small retailers is their only source of income, they might find it hard to recover from such a displacement. Any large change in any sector, technological or otherwise, has its losers and gainers. However, the question is whether the overall gains to the Economy and its people are larger than such losses, and the answer in this case is yes.

In the 1980s, when computers were introduced by the government to modernise the Economy, trade unions, bank workers and railway employees strongly opposed the change on fears that livelihoods would be lost. Today, the IT sector is the backbone of the modern Indian Economy, and the issue was merely one of adjusting to new technology. Modern large-format retail, at its most sophisticated, presents a similar transformation. It is better to adapt to it than resist it.

If we look at the bigger picture of costs and benefits to various stakeholders, it would be clear that the gainers would be farmers, who would welcome disintermediation and better remuneration for their produce, which would induce them to invest more in their farming operations. Besides, big retailers would help develop India's processed foods industry, which would create millions of new jobs. In general, any sector that undergoes such thorough modernisation tends to have a ripple effect in terms of allied/secondary services and jobs.

All said, it is now up to India's policymakers to decide whether the interests of 12 million retailers or the welfare of over a billion consumers and a huge number of farmers. Not to be ignored is the fact that the new retail revolution is expected to generate around 2 million new jobs in just a couple of years, and many more over time. The employment generated in agro-based industries could be still higher. A boost to agricultural growth will not only alleviate poverty but also increase demand for various industrial goods, which will further generate secondary employment.

Yet, the myopia of our politicians, vested interests and lack of initiative have been holding this retail revolution back. Many states have failed to follow the guidelines laid down by the model Agricultural Produce Marketing Committee (APMC) Act, which allows farmers to sell their products directly from farmers. Bihar has scrapped the Act, and the UP Government has recently withdrawn the agriculture investment policy under which private players could directly buy products from farmers.

Such inconsistency in policies will only discourage investors and hurt regional development. Political leaders, who speak about alleviating poverty through development, need to demonstrate their support for a long-term vision that involves creating an efficient and effective regulatory framework for the retail sector.

– Assistant Policy Analyst, CUTS Centre for Competition, Investment & Economic Regulation, Jaipur. Abridged from an article that appeared in *The Financial Express*, November 05, 2007.

# It's Gone Too Far: Revise Taxes of It's Petro Goods Now

– Jaideep Mishra

*The ostrich-like policy response to record international crude oil prices is regressive and wholly unwarranted. The non-revision of retail prices of key petroleum products would fundamentally misallocate budgetary resources, recklessly rev up consumption subsidies and generally mean a high-cost oil economy. Instead, what's pressingly required is a thorough relook at the taxation regime for petro-goods, proactive market design to shore up efficiency prices in oil, and a pricing policy that makes it possible for domestic prices to competitively reflect international scarcity value of crude.*



Now, the cabinet has reportedly approved the issue of oil bonds to oil companies, purportedly to plug the surging “under-recoveries” in retail sales of petro-goods. Alongside, the executive has decided to carry on as usual: Of pricing oil products by fiat and disallowing price revision never mind surging costs of imported crude. Reports say that the latest tranche of oil bonds would amount to at least Rs 23,456 crore. Since the bonds would need to be redeemed with budgetary resources, it would necessarily mean curtailing allocations on other, more pressing heads. It would imply diverting funds meant for much-needed social infrastructure, and unabashedly courting with populism on oil prices. For the express purpose of policy inducing guzzling on oil subsidies!

But while putting oil price revision on the policy back burner is positively retrograde, the fact remains that there are a panoply of other distortions in oil pricing. For instance, in the capital, taxes constitute as much as 54 percent of the retail selling price of petrol and over 32 percent of retail prices of diesel, which surely do need to be reduced to reasonable levels. The effective tax rates, after factoring in adulteration of fuel, known to be rather rampant, would of course be far higher. The extant tax regime for oil products is really an anachronism from the days of autarky when the economy was effectively ‘closed’ and with limited tax options. High oil then would arguably have made some sense.

However, for an avowedly internationalising economy,

continuing high, *ad valorem* taxes on oil products put extra costs on user industries, and by implication add to costs economy-wide. It means that domestic industry stands to have a comparative tax disadvantage *vis-à-vis* oil products. It would be on top of other avoidable disadvantages, such as infrastructural bottlenecks. Now, disallowing retail oil price revision does not mean that the economy would somehow escape the consequences of hardening international prices.

The policy stance would almost certainly imply unscheduled borrowings by oil marketers, and given the volumes in oil, the heightened capital requirements would add to the cost of funds across the board and mean further hardening of interest rates. There are other anomalies in the oil economy. The relative tariff protection for petroleum products remain attractive. Notice the heavy capacity addition in the pipeline in petroleum refining. Worse, there is effective ring-fencing of retail oil sales. It suggests much scope for cosy cost-plus mark-ups across the value chain, in transportation, storage and supply.

Now, that oil accounts for over 10 percent of the overall economy, continuing with the policy rigidities in petro-goods would be at huge national cost. What is required is that taxation levels on petrol and diesel be brought down. There is a strong case for reducing excise by say Rs 2 per litre. A return to ‘specific’ duties, with excise linked to volume, would clearly be less distorting than the current system of *ad valorem* duty linked to price.

Also, now that we have a pan-India system of value-added taxes, with taxes on production and sales paid only on the value-added, what is required is an integrated VAT regime for oil products. Specifically, needed are set-offs and input tax credits on petro-products which are wholly absent at present. The larger issue is to diversify the revenue base away from oil products: it would be plain regressive if petro-goods continue to account for well over 40% of Central tax revenues.

Further, outright subsidies on oil products like those on domestic LPG (cooking gas) and PDS kerosene, which now add up to over Rs 20,000 crore per annum and rising, do need to be streamlined. The subsidy on cooking gas, used as it is almost exclusively by the non-poor, needs to be phased-out, say, over a three-year period and done away with entirely as recommended by the Rangarajan committee.

The subvention on kerosene could be much better targeted using smart cards, cash coupons, and improving access to alternate fuels like solar energy. As various studies reveal, much of the kerosene is diverted to adulterate automotive fuels. In parallel, what is in effect substantial custom duty differential between crude and products needs to be removed.

Given the modest value-addition in oil refining, even nominal duty differential can mean considerable tariff protection. Besides, the opening up of oil sales to the larger retail sector would mean more competitive prices.

– Abridged from an article appeared in the *Economic Times*, on October 26, 2007

### Outsourcing Online on the Rise

Outsourcing over the web is catching on among small and medium businesses (SMBs). Elance.com, Guru.com, Ninemotion.com and Rentacoder.com are destinations for those seeking to outsource small jobs to India, to cut costs and leverage the 'flat' world.

India remains the top outsourcing destination for entrepreneurs in the US. According to a media report, 24 percent of entrepreneurs in the US outsource work to other continents, of which 46 percent comes to India.

Analysts opine that SMBs are increasingly likely to offload cumbersome IT chores to outside experts, so that they can focus on their core business.

Services such as language translation, graphics design, writing, engineering services, business consulting, marketing, print, human resources and administrative support are being sought. (BL, 02.11.07)

### National Investment Fund

The Centre launched the National Investment Fund (NIF) to pool proceeds from sale of Government equity holdings in Public Sector Undertakings (PSUs).

While 75 percent of the annual income of the fund would be used for financing selected social sector schemes that promote education, health and employment, the remaining 25 percent would be used to meet the

capital investment requirements of state-run companies.

The fund would be professionally managed to provide suitable returns to the Government without depleting its capital.

A part-time Advisory Board has been constituted to advise the Chief Executive Officer of NIF on various aspects of functioning of the fund such as investment strategy, allocation of funds to the selected fund managers, negotiation of management fee and charges to be paid to the Fund Managers.

(BL, 06.10.07)

### Focus on Deserving Sectors

P Chidambaram, Union Finance Minister, while making a strong plea for removing non-merit subsidies said that a mechanism should be put in place to re-visit sops every three-five years to weed out non-deserving sectors and focus only on the deserving sectors.

He was in a favour of continuing subsidies for food, fertiliser and some selected fuels, and asserted that the subsidy component of the Public Distribution System (PDS) would not be disturbed. The government was not reducing subsidy for the PDS.

Blaming the state governments for massive corruption in distribution of food grains through the PDS, Chidambaram said an expert committee found that only 36.38 percent of the allocated food grains reached the poor and a chunk got lost

in leakages through ghost ration cards. (TH, 02.12.07)

### RBI to Check FDI

The Reserve Bank of India (RBI) has been finding it tough to manage the large foreign capital inflows into the country.

Due to the rising inflow of foreign funds into the real estate sector, RBI has asked the Union Finance Ministry to allow foreign direct investment (FDI) into the real estate only after clearance from the foreign investment promotion board.

At present up to 100 percent FDI is allowed in realty projects through the automatic route with certain conditions like a three-year lock in on investments and minimum capital investment of US\$5mn.

RBI, however, wants real estate removed from the list of sectors where FDI can come in through the automatic route.

It has also been noticed that realty players are now eyeing the West for joint ventures to increase their revenue and reach. These tie ups are clean revenue sharing models wherein partners would invest in land. Joint ventures are purpose oriented and beneficial for both the parties.

Recent market sentiments have led to an increase in activity for international marketing. It is by and large exploited for township projects and premium or luxury apartments catering to the needs of higher income groups. (ET, 24.10.07)

## Government to Tighten Norms on FDI

The Government is planning to tighten foreign investment reporting norms to push companies to issue shares to foreign investors within a fixed period after receiving the investments. With no time-frame stipulated, companies often cancel an investment deal and return the fund after using it for several months.

The move is aimed at addressing concerns of the central bank about misuse of foreign investment guidelines. As per the guidelines prescribed under Foreign Exchange Management Act (FEMA), an Indian company issuing shares or convertible debentures has to submit a report to Reserve Bank of India (RBI) within 30 days of receipt of money.

The company then has to file another declaration (FC-GPR) after 30 days of issue of shares. These guidelines are applicable for sectors that are on automatic FDI route list. According to sources the issue was being examined in detail particularly because it also deals with forex inflows.

(ET, 26.10.07)



# Changing Dynamics of the Company Board

– M Y Khan

**T**he Indian corporate sector is getting globally connected, and cross-border takeovers and mergers are hastening this process. The natural consequences of global consolidation and international competition are systemic and un-systemic risks, and these are on the rise. The market share of companies are changing due to innovations in products and services, marketing and distribution technology changes and movement of consumers across borders. With such revolutions happening, companies cannot afford to take wrong decisions or delay implementation of key policies. Hence the emerging scenario warrants strong company boards comprising efficient directors with specialised knowledge. The role and functions of board directors are, therefore, widening.



## Role and functions

Directors, besides their fiduciary duties and the responsibility to take care of the interests of the company (shareholders), have to protect the interests of employees, creditors and regulatory bodies (compliance). In addition to crafting strategies to meet global competition and absorbing technological advancement to enhance the overall performance, they have to look at corporate governance issues such as responsibility towards society.

The law prohibits board members from putting themselves in a position wherein their personal interests clash with those of the company. In this context, here is what Cadbury Report states: "Every public company should be headed by an effective board which can both lead and control the business with future vision and no personal interest. This means a combination of executive director and outside non-executive directors".

A board's top priority must be the welfare of the company at any given point. Experience shows that only few boards devote time to study the growth and diversification prospects of their companies in the long-term.

## ED and NED

An important component of the board is executive and non-executive directors. While an executive director (ED) functions with executive powers and has access to important information of the company and its infrastructure, the non-executive

director (NED) works as a guide without power and are on the board only because of reasons such as personal relationship with the executive chairman and managing director and seldom on the basis of merit and professionalism.

Excellent co-ordination and mutual understanding become an issue in many companies. A dynamic chairman will hold at least some of the board meetings at sites away from the headquarters, in order to get EDs and NEDs understand each other in a way that cannot be done at formal meetings (and incidentally give a taste of the operating realities of the business).

There is no point in presuming that EDs and NEDs have the same interests and roles. The fact that some of their accountabilities are identical should not blind us to the reality that they are on the board for different reasons, and have different parts to play.

## Chairman's Appointment

An emerging issue is the appointment of the chairman. The question is whether the practice of appointing the dominant shareholder as the company chairman is better for the smooth functioning of an organisation, or is appointment of the non-executive chairman who can discharge his duties in a fair manner a better bet.

Now there is an emerging view that the chairman should be the non-executive chairman, particularly a public representative director with

adequate power and no material relationship with the company.

The non-executive chairman can play a pivotal role in co-ordinating the views of the board members. He needs to be a leader in the real sense and generate new ideas and strategy for the company's growth, by inducting new technologies and innovations.

However, a non-executive chairman is generally in a vulnerable position even if he has the expertise needed by the company. The non-executive chairman is merely a presiding officer with fiduciary duties, but with no power to direct the board members to take decisions that could help in the company's growth. The non-executive chairman functions as head with no role in the operations.

There are several cases where companies have incurred undesirable expenditures and kept secret sensitive shortcomings and weaknesses. But the non-executive chairman, unfortunately, cannot lay hands on such information.

These issues should be taken up by the chairman. Else, in the long run, the company along with common shareholders will suffer even as the major shareholders and executives reap the benefits.

Auditors have to be more vigilant and accountable to point out such issues in their report to the board.

The regulator has to make some amendments in its corporate governance laws so that the board of directors and non-executive chairman can work effectively.

### Regulation on SEBI Advisors

The draft regulations on registration and responsibilities of investment advisors by the Securities and Exchange Board of India (SEBI) has been welcomed by market participants as this might lead to the profession being established on organised lines.

Under the draft regulations proposed by SEBI, persons offering financial advice will have to be registered with SEBI and they shall not put themselves in a position of conflict of interest with their clients.

The investment advisors now will have to be registered in order to offer advisory services. Along with this, they have to be part of a self-regulatory organisation for getting certification in this regard from SEBI.

Furthermore, the advisors will have to make relevant disclosures about themselves, their operations and affiliations. Experts opine that there will be some sort of a system and with these guidelines, it is sure to be treated as a profession. (BL, 11.10.07)

### Survey on Firms

Family-owned companies dominate India's corporate landscape, according to a new joint survey on Indian corporate governance by Moody's Investors Service and Investment Information and Credit Rating Agency of India (ICRA) Ltd.

Such firms have specific characteristics compared to companies with more widespread share ownership. The survey covered certain corporate governance practices of 32 Indian companies in 16 prominent family groups, covering a broad cross-section of Indian industry.

Positive characteristics of family control can include a long-term perspective and an ability to act quickly; and Indian family companies have responded well to the opportunities available in the fast growing and liberalising economy.

However, family control can also raise specific corporate governance concerns – with potentially negative credit implications – that include adaptability, leadership transition, checks and balances, and transparency.

Further the report adds that there is often insufficient transparency on ownership/control, related-party transactions and the group's overall financial position. Also, the prospect remains of higher leverage as families try to maintain control while implementing their often aggressive growth plans. (BL, 24.10.07)

### ONGC Faces Delisting Threat

The contentious issue of number of independent directors on board of PSUs continues to haunt state-owned companies.

With Petroleum Ministry's attempts to seek time from SEBI for appointment of independent directors on board of PSUs, including Oil and Natural Gas Corporation Limited

## Mechanism for CSR Contribution

In a bid to put in place a proper mechanism for the capital market to recognise corporate and social sustainability (CSR) contribution of listed companies, the Bombay Stock Exchange (BSE) was planning to create a new indexation of such companies, which will be recognised by investors as such and taken note of in their investments.



Rajnikant Patel, Managing Director & Chief Executive Officer of BSE, said the methodology for such an index, which allows recognition of "triple bottom line" concept to be built into the psyche of the market, was now being developed in-house.

In his opinion, through such a corporate governance index, stock exchanges can help usher in greater transparency into company disclosures. (BL, 29.11.07)

(ONGC) failing, the exploration and production major has not only attracted penal provisions for non-compliance of corporate governance norms, but also faces the threat of delisting.

An adjudication proceeding has already been initiated against the company for non-compliance of Clause 49 of the Listing Agreement, which stipulates that at least 50 percent of the board should comprise independent directors. (BL, 11.11.07)

### Positive Bearing on Stock Prices

Nearly 98 percent of companies listed on the National Stock Exchange (NSE) comply with all norms of corporate governance, which has a positive bearing on stock prices.

NSE Managing Director Ravi Narain said improved corporate governance of Indian companies has resulted in the appreciation of their stock prices. Corporate governance is more about inculcating this culture voluntarily rather than through regulation.

He also asserted the need for building a code of conduct on the issue of price sensitive information, which continued to create problems for the market and market regulators.

(ET, 12.12.07)

### A New Code of Conduct

The way accounting firms build their brands and accept clients is set to change with a new code of conduct for them coming into force in India as part of a global initiative.

The revised code of ethics for the profession evolved by a global body of various national accounting regulators – including the Institute of Chartered Accountants of India (ICAI), prevents an accounting firm from offering certain services to a company if an affiliate of the firm offers some services to that company or its subsidiary in another country. The purpose of this bar is to avoid clash of interests.

According to ICAI sources, much of the code, evolved by the International Federation of Accountants (IFAC), is part of the code of ethics drawn up by ICAI. However, it is the law – rules and regulations under the Chartered Accountants Act – that prevails over this code. (ET, 19.11.07)

## India Second Most Attractive

India has emerged as the second most attractive location after China, but ahead of the US and Russia, for global FDI in 2007, the World Investment Report of the United Nations Conference on Trade and Development (UNCTAD) has said.

China is the most preferred investment location, followed by India, the US and then the Russia and Brazil.

India's ranking in inward FDI performance index has also improved to 113 in 2006 from 121 in 2005. In terms of locational choice for foreign investors, China polled 52 percent of the respondents in the UNCTAD survey followed by India with 41 percent. *(ET, 16.10.07)*

## Scaling New Frontiers

India's telecom market has grown rapidly in the last few years with revenues of over US\$22bn and an average annual subscriber growth of about 45 percent and revenue growth of about 25 percent, says a newly released report from PricewaterhouseCoopers (PwC).

The PwC report expects Indian telecom sector to scale new frontiers, building on its strong foundations of fulfilling the demand for a connected economy, fast paced rollouts and coverage, and realistic pricing.

The report observed that the strong growth expectations in the Indian telecom sector compared to near matured markets in developed countries is attracting foreign direct investments as well as institutional investments including significant private equity (PE) inflow in the country. *(BL, 13.12.07)*

## Falling on Development Index

India has failed to effect any improvement in its key development indicators. It has been ranked 128, two places below in 2006, in the latest United Nations Human Development Report.

But irrespective of the ranking, the report shows India clearly falling. The country's poor performance in child literacy and nutrition is clearly visible as countries with overall rankings and gross domestic product

## Emergence of Ultra Poor

Poverty alleviation programmes in India have not been able to create a balanced impact. Bangladesh has fared better than India in terms of poverty alleviation, according to a recent study of the US-based International Food Policy Research Institute (IFPRI).

IFPRI found 162 million people of the world living on less than 50 cents a day and has termed them

"ultra poor". It has divided the poor into three distinct categories – "sub-jacent poor" living on 75 cents to US\$1 a day, "medial poor" living on 50 cents to 75 cents a day and "ultra poor" living on less than 50 cents a day.

IFPRI study entitled, "The World's Most Deprived" said that South Asia accounted for 12 percent of the world's poorest people. In India, poverty alleviation has not gathered momentum, while in the neighbouring Bangladesh poverty rates relating to all the three categories of poor have fallen since the end of 1990s. *(FE, 07.11.07)*



Business Standard

(GDP) far below India's have fared well.

India rubs shoulders with Ethiopia, Burundi and Chad whose overall rankings are 169, 167 and 170 respectively. On adults who can read and write, India is on par with sub-Saharan Africa, where the figure is 59.3 percent. The Indian figure is 61 percent. *(BS, 27.11.07)*

## Growing Millionaires in India

Over six lakh millionaires are concentrated in just 10 cities of the country, with the national capital accounting for maximum number of them.

Delhi has emerged as the top city in terms of number of millionaires in the country, housing over 1.38 lakh of them, followed by Bangalore with over 1.04 lakh. The country's financial hub, Mumbai, has over one lakh households earning more than 10 lakh per year, data compiled by Indicus Analytics' Housing Skyline of India 2007-08 shows.

Besides, according to Indicus's 'reside-in' index, 8 out of 10 top cities are from South India, with Kochi emerging as the most livable place.

The index ranks cities on the basis several indicators, including health, education, environment and safety among others. They indicate how good the city is in terms of living conditions. The 10 most livable cities in the country include Kozhikode,

Shimla, Thiruvanthapuram, Mysore, Goa, Thrissur and Pondicherry

*(BL, 24.11.07)*

## Stepping up Reforms for Growth

India must push through further reforms if it is to achieve the Government's objective of double-digit economic growth by 2011, according to the Organisation for Economic Co-operation and Development (OECD).

The OECD has warned that India was not fully exploiting its comparative advantage as a labour-abundant economy because of high levels of employment protection that deterred companies from hiring workers for large-scale manufacturers.

The OECD echoed longstanding calls for reform of the Industrial Disputes Act that requires businesses to obtain Government permission to lay off even a single worker from manufacturing plants with more than 100 employees.

The OECD also urged the government to open the economy more rapidly to international trade and to FDI in tightly protected service sectors, such as insurance and retailing.

The OECD report also recommended more investment in infrastructure, cutting fuel and food subsidies, financial sector reform, privatisation of public sector businesses and fiscal consolidation.

*(FT, 10.10.07)*

## Corruption in Construction Sector is Larger

*Integrity Pact or IP – aimed at ensuring that no bribes are given or taken – is the new buzzword in the corridors of government-owned companies. The companies that have signed these pacts with the India chapter of the Berlin-based Transparency International include many major PSUs. However, Admiral (Retd) R H Tahiliani, chairman of Transparency International India, tells that a lot of corruption still remains to be uncovered. The following is an excerpt of his interview.*

### On the rush for signing the Integrity Pact

ONGC was the first to come on board in April 2006. Their experience has been very healthy, with Rs 34,000 crore (Rs 340 billion) worth of contracts signed since then, and no one has gone to court or asked for arbitration. All ministerial intervention is reported to have stopped. Then there was a rush of pacts in 2007, as companies realised that it was a good way to end political interference. Bidders were also happy to abide by the pact since it reduces their costs.

### On savings from curbing corruption

The experience of companies worldwide is that there is a 10-15 percent improvement in the bottom line.

### On high corruption in various sectors

Corruption in the construction sector is larger. That sector has to be tackled with a much more elaborate IP, which we are working on. We have tried to make inroads into aviation too. In Berlin, the new international airport is being built under an Integrity Pact. I tried to push it with civil aviation ministry, but it has not worked yet.

### On corruption despite the Integrity Pact

First the case will go to CVC, and the next step is to go to the public. We have not had to do that so far. If a supplier company is implicated, it could end up paying penalties and being blacklisted from future contracts for a certain period.

*Excerpts from an interview that appeared in the Business Standard, dated November 16, 2007*

### Growth for Public Services

“The Government needs to allocate more funds towards primary education and healthcare to achieve its target of inclusive growth and ensure greater efficiency and accountability in delivery of public services through organisational reforms”, said economist and Nobel laureate Amartya Sen.

Sen opined that resources generated from economic growth should be used for public services and public goods in general, rather than being absorbed only in private consumption.

He said there has been slow progress on the education front, despite the economic reforms in the

country. He suggested collaboration with social groups and the unions of primary school teachers and healthcare workers to tackle the various problems in the areas of education and healthcare.

Sen observed that education can have powerful effects on quality of life and also emphasised on the importance of female literacy. *(ET, 10.17.07)*

### Achieving 10-11 Percent Growth

India with improved infrastructure facilities can increase the rate of its GDP growth to about 10-11 percent, Asian Development Bank (ADB) President Haruhiko Kuroda said.

Kuroda pointed out that with the development of infrastructure, India

could hope to achieve a higher economic growth of about 10-11 percent, as seen in the case of China, as compared to the current level of 8-9 percent.

Dwelling on the problems in financing infrastructure projects, Kuroda noted that the public-private partnership (PPP) model could help in mobilising long-term resources that are required for upgrading the country's infrastructure facilities. *(BL, 12.10.07)*

### Measurement for Poverty

Leading economist and chairman of the National Statistical Commission, Suresh Tendulkar, has said that India should use only one measurement of poverty – 365 days consumption expenditure data.

At present, one measure is based on consumption expenditure data for 365 days while another is based on data for 30 days. This leads to confusion about the country's poverty level.

Tendulkar's views are significant as he heads a committee set up by the Planning Commission to come out with a new poverty line that is comparable over time and across states.

Policy-makers and bureaucrats use poverty data to ensure more efficient public expenditure. While the country's poverty level based on 30 days data is 27.5 percent, it is 21.8 percent based on 365 days data.

*(BS, 25.11.07)*

## India: Second Most Complex Country

With multiplicity of tax regimes in India, it is the second most complex country in the world after Brazil, noted Anthony McClenaghan, the global indirect tax leader, Deloitte Haskins & Sells.

McClenaghan told that there is an urgent need to implement Goods and Service Tax (GST) so that the cascading effect of taxes is removed from indigenous manufacturing and services cost, transaction cost is reduced and trade and industry grow faster by taking advantage of boom in the economy and efficient supply chain.

Lack of uniformity in the tax regime results in double taxation and exporters find it hard to get the credit for the taxes paid. *(FE, 29.11.07)*



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# And Justice for a Handful

– M Shamsur Rabb Khan

*The Global Corruption Barometer 2006 reveals that more than 10 percent of global respondents have, at one time or the other, paid a bribe to obtain a favourable outcome in a case.*



Transparency International's 429-page "Global Corruption Report 2007 – Corruption in Judicial System" (GCR) maps out the turpitude plaguing the judicial sector in countries across the globe. And the performance of the Indian judiciary is dismal, if not the worst.

For example, on the Corruption Perception Index (CPI) 2006, India ranked 70<sup>th</sup> (out of 163 countries) along with Brazil, China, Egypt, Ghana, Mexico, Peru, Saudi Arabia and Senegal with a CPI score of 3.3 out of 10. India's last ranking (30<sup>th</sup>) in the Bribe Payers Index 2006, shows that to become a powerful nation that can compete with the developed world, India has miles to go in ensuring a fair justice system.

In the Indian context, the GCR details two cases where the judiciary failed to deliver: first, a Supreme Court decision in the 2002 case, *Zahira Habibullah Sheikh vs State of Gujarat*, in which the apex court punished the victim rather than the culprits and acquitted a person close to the party in power.

Second, the 2006 acquittal of the nine accused in the Jessica Lal murder case in 1999 even though the incident took place in the presence of several witnesses, because one of the accused was the son of a politician.

With the assertion that the "judiciary is facing a crisis of confidence in many parts of the world," TI defines corruption as "the abuse of entrusted power for private gain". The Global Corruption Barometer 2006 reveals that more than 10 percent of global respondents have, at one time or the other, paid a bribe to obtain a favourable outcome

in a case. The report records two types of widespread judicial corruption: political interference in the judicial process, and bribery.

On the basis of the data prepared in response to this question, the sector that is most affected by bribery is the police (17 percent), followed by the registry and permit service (9 percent), and legal system/judiciary (8 percent). "Which regions are most affected by bribery?" can offer us some relief as Africa (55 percent), not Asia (32 percent), has the distinction of paying the highest percentage of bribes to the police.

The report adds that corruption has two manifestations: one is the corruption of judicial officers, and the other involves the broader judicial system itself. The upper judiciary is relatively clean, with exceptions. Under the broader judicial system, however, corruption is systemic – there is a high level of corrupt practices among clerks, prosecutors and police investigators who misuse their power.

The report cites the countrywide survey conducted by the Centre for Media Studies, New Delhi in 2005 on public perception and experiences of corruption in the lower courts. The survey said that bribing is the best means to get things done. The survey estimates such bribes at around Rs 630 crore per year. This money is given in the following proportions: lawyers get 61 percent, court officials get 29 percent, judges get 5 percent; and middlemen get 5 percent.

In India, the current ratio of judges to population is 12 to one million, compared to 107 judges in the US, 75 in Canada, and 51 in the UK. In

March 2006, there were only three vacancies in the Supreme Court, 131 in the high courts and 644 in the lower courts. In February 2006, 33,635 cases were pending in the Supreme Court with 26 judges; 3,341,040 cases in the high courts with 670 judges; and 25,306,458 cases in 13,204 subordinate courts.

And at the current rate of disposal, it would take another 350 years to dispose off the pending cases if no other cases are added to the list. Judges cope with such huge lists by declaring adjournments, which prompt people to pay speed money. The report points to the Malimath Committee report of 2003 (on the criminal justice system) which recommended sweeping reforms in the judiciary, including in the investigating agencies, the prosecution department, courts, lawyers, the prison administration, and so on.

On the solutions front, the report also suggests four key areas: (i) judicial appointment, which includes an independent judicial appointment body, merit-based appointment, and civil society participation; (ii) terms and conditions, which include judicial salaries, protection, transfer, access to information and security of tenure; (iii) accountability and discipline, which includes codes of conduct, a whistleblower policy, strong and independent judges' association, among others; and (iv) transparency, which includes transparent organisation, work, prosecution services and judicial asset disclosure, among others.

Do we have the will to go ahead with judicial reforms?

– Editor, *CUTS International*, Jaipur. Abridged from an article that appeared in the *Business Standard*, October 14, 2007

## Increase in Drug Prices

In a move that vindicates the Supreme Court's directive to bring essential drugs under the ambit of price control, the drug price regulating authority has found that the prices of top 15 bulk drugs of equal number of well established Companies, which were out of price control, have gone up by about 10 percent per annum as compared to less than one percent in equal number of drugs under control over the last 10 years.

This increase in drug prices is despite the fact that competition, in most of the cases, has significantly brought down the cost of input materials.

Prices of bulk drugs such as diclofenac sodium, paracetamol, cephalixin, ampicillin and chlorophenol have dropped significantly across the globe on account of competition.

The drug regulator, National Pharmaceutical Pricing Authority (NPPA) found that the price movement of 15 top scheduled medicines that are under control was not significant.



(FE, 14.11.07)

### States to be Judged

The Centre may initiate a carrot-and-stick policy to ensure efficient and timely implementation of development projects at the state level.

The states would be judged on the basis of 13 identified monitorable development targets. These targets would be key to timely release of Centre's budgetary allocation to the states. The proposal has been included in the draft 11<sup>th</sup> Plan approved by the Union Cabinet.

While the aim is not to put any additional burden on the states, the Centre could intervene if states fare badly on any of the monitorable targets. With the plan funds being released to states on a quarterly basis shortfall on targets could delay the process.

The move aims to prevent the 11<sup>th</sup> Plan from faltering from its desired goals and help the center to achieve the objective contained in the National Common Minimum Programme.

(ET, 07.10.07)

### New Advertisement Policy

The Government has evolved a new advertisement policy to increase support to small and medium newspapers besides encouraging the print media in tribal languages and Urdu.

The new policy of the Directorate of Advertising & Visual Publicity (DAVP) aimed at increasing support

through the DAVP to newspapers in languages such as Bodo, Dogri, Kashmiri, Khasi, Konkani, Maithili, Manipuri, Nepali, Sanskrit, Santhali, Sindhi and Urdu.

Newspapers in these languages will now be able to empanel with the DAVP even if their circulation is less than 500 copies.

Though the broad contours of the policy are more or less final, the Ministry has decided to allow room to factor in the views of stakeholders.

(TH, 03.10.07)

### Guidelines to Speed Up

The Government has issued fresh guidelines aimed at reducing delays in public investment projects and making their implementation faster.

For projects being undertaken by the ministry of surface transport, fresh appraisal and approval will be required in case costs increase by Rs 500 crore for a single project, instead of the current practice of Rs 150 crore.

The Government has also permitted ministries to approve increases in costs that may occur on account of exchange rate variations, statutory levies and price escalation during the approved project time cycle.

The new rules will be applicable to all projects formulated in the 11<sup>th</sup> Plan period from 2007-12. The Government further has made it incumbent on project authorities to

have a "mandatory review" of cost estimates to determine whether these need upward revision at the stage when funds to the extent of 50 percent of the approved costs have been released.

(FE, 17.11.07)

### A Separate Medical Department

In a move that could trigger a major debate among the medical fraternity, the government is reportedly toying with the idea of creating a separate department of medical education in the ministry of health and family welfare.

According to sources, the proposed department is set to strangle the autonomy of Medical Council of India (MCI) and ignite fresh sparks in the ongoing ministry-medical fraternity tussle.

The new department will be headed by a non-IAS secretary who may be picked up from the medical fraternity. The new department is expected to handle regulatory and administration works related to medical education in the country.

The creation of the new department was necessitated by the Government's conscious decision to allow more medical institutions on PPP mode. Once the new department is created, the functioning of the country's medical college-cum-hospitals, including All India Institute of Medical Sciences, Post Graduate Institute of Medical Education and Research and others, will be under two departments.

Experts, however, feel the move could curtail the autonomy of MCI and strangle the autonomy of Government institutions.

(ET, 02.12.07)

### Real Estate Regulator Soon

Property buyers in Delhi, who were so far left at the mercy of developers and real estate agents, can have a sigh of relief as the Government has announced that a regulator for the sector will be set up by 2008.

According to sources, the builders and buyers can approach the regulator and get their grievances addressed. It will be for Delhi and a model for other states.

The Government would bring a bill on real estate sector in the Budget session of the Parliament.

(ET, 29.11.07)

### No plan for Fund Spending

Only around 27 percent of the funds allocated to the flagship Backward Regions Grant Fund (BRGF) in the budget has been spent in nine months of the fiscal year.

The money is sitting in Delhi and is yet to reach the *Panchayats* for which it is intended because the state governments have not submitted plans on how they intend using it.

BRGF was designed as a major initiative of the United Progressive Alliance (UPA) government to help backward regions catch up with the rest of the country.

Excuses for not submitting district plans abound. Some states have cited Assembly election preoccupations. Others say there are no *panchayats* in place.

BRGF is meant to be implemented through district plans which are prepared at the grassroots by the state government with active participation at the *gram panchayat*, block *panchayat* and *zila panchayat* level.

(BS, 30.11.07)

### New Consumer Friendly Law

Consumers of banking and telecom companies can look forward to a more-friendly and hassle-free legal system where they could get their grievances addressed without any painful delay.

The Government is planning to amend the Consumer Protection Act to make it easier for people to seek justice. The Ministry of Corporate

Affairs and the Department of Consumer Affairs (DoCA) are working in tandem on the proposed set-up.

The DoCA has proposed that the new company law should make the top management of corporate houses sensitive and accountable while redressing consumer grievances.

It has recommended that the new statute should mandate companies to install a system of faster redressal of consumer complaints, which should be monitored at the top management level.

The department has also said that complaint redressal should not be left as an option, but should be made mandatory to the statutory audit, which an independent auditor now performs on other compliance requirements.

(ET, 22.12.07)

### CAG Indicts Health Ministry

The Comptroller and Auditor-General of India (CAG) has indicted the Union Health Ministry for "inadequate management of the pharmaceutical procurement procedures and operational principles for acquisition of medical equipment" in Central Government hospitals and under various programmes of Central Government Health Scheme (CGHS).

The lapses result in financial losses and affect the objective of providing diagnostic and therapeutic services to the public, the CAG said, adding that expenditure on purchase of supply and materials including medicines and

medical equipment constituted about 13 to 16 percent of total expenditure of the Ministry during 2002-07.

Pointing out that the procurement policy, procedures and practices in the Department of Health and Family Welfare, Directorate General of Health Services and Central Government hospitals showed that standard good pharmaceutical practices were not followed, it said that procurement process was characterised by "ad hoc and arbitrary decisions".

### Private Builders to Help Poor

It would now be mandatory for private builders to earmark at least 10 percent of their housing projects for economically weaker sections of the society.

The Centre has tabled the new urban housing policy which envisages increased PPP in the housing sector and encourages integrated townships.

The National Urban Housing and Habitat Policy, 2007, passed by the Cabinet earlier was tabled and ratified in both houses of Parliament.

The policy focuses on affordable urban housing with special emphasis on the urban poor, scheduled castes, tribes, backward classes and minorities.

The policy has also proposed to allow cross-border foreign institutional investments (FII) into residential mortgage backed securities.

(ET, 08.12.07)



## Policy for SEZs on Anvil

The Government is in the final stages of formulating a new policy for compensating villagers whose land is taken for special economic zones (SEZs) envisaging increase in solatium up to 100 percent.

According to sources, the land owners losing their holdings would not only be paid a liberal compensation but also a "solatium" under the Land Acquisition Act.

There is a proposal to increase the solatium and whether the increase will be 50 percent, 60 percent or 100 percent is under consideration of the Government. This amount, which is paid over and above the compensation for land purchase, is at present 35 per cent of land value.

Only barren land should be used for the SEZs and other industrial projects. There would also be an effort to provide "land for land" to the affected farmers, said the source.

In case the SEZ or industrial project promoter acquires land in excess of the requirement, he would be asked to share the gains made from the extra land kept unused.

Besides, farmers and those affected by the SEZs would be given non-transferable shares so that "they benefit from the progress in the industrial units".

(BS, 23.11.07)

# Should Competition Regulator Compete to Regulate?

KG Narendranath\* & Gireesh Chandra Prasad\*\*

The war has begun and there will be many more battles and skirmishes before it is over. The Competition Commission of India has recently asked the telecom regulator, TRAI to drop the latter's plan to create an "additional regime" of merger regulation in the telecom space as per new criteria since it might not "coincide with" the commission's own merger code. CCI's conviction is that the Competition Act defines the term 'combination' broadly, filling the post-1991 vacuum of competition-related merger provision in Indian laws.

TRAI has proposed a cap of 40 percent market share and no less than four players in each "telecom circle" as part of its merger regulations. It said its intention is to examine mergers for their competition effects. TRAI's move is perceived by the Competition Commission to be impetuous, redundant and capable of creating confusions. It could add to telecom enterprises' compliance cost, the Commission feels.

To understand what seems to be a turf war but what could be a much more serious policy puzzle, it is essential to note what the competition regulators are concerned about: their mandate is to avoid anti-competitive behaviors like abuse of dominant position and pre-empt anticompetitive tendencies. This explains why they want to oversee certain combinations of persons or enterprises doing some economic activity.

In India, the Competition Act, passed by Parliament recently, provides for mandatory notification to the CCI if any merger or other forms of combination above certain thresholds. This is to enable the regulator to examine whether the combination would have an "appreciable adverse effect" on competition in the relevant market. And the market in this context is defined in terms of natural geographical territories – places where the goods and services are sold-but not by artificially divided markets such as the telecom circles.

So, TRAI's proposals, if implemented, could create many problems. TRAI defines mergers merely in terms of acquisition of equity and merging in terms of acquisition of equity and merging of licences, whereas the term 'combination' in Competition Act includes "a merger or amalgamation and acquisition of control, shares, voting rights or assets." The CCI says any substantial acquisition

of equity by one telecom firm in another amounts to "acquisition of control" and would come under its scrutiny if above the threshold.

That apart, many other forms of combination – including acquisition of assets including market presence in a given geographical territory – would also come under CCI's scrutiny. So, CCI warns, could lead to "forum shopping".

The merger regulation proposed by TRAI might fail to thwart many anti-competitive practices. For instance,

privately held corporates could work out business (market) sharing arrangements internally without any restructuring of equity that would catch TRAI's attention.

TRAI's is not the only case of an alleged interference with CCI's mandate. The Electricity Act through its Section 60 makes an attempt to enter the domain of competition regulation. So does the Petroleum and Natural Gas Regulatory Board Act, which has sourced the clause on restrictive trade practices from MRTP Act. In fact, the Competition Act anticipates such problems and offers to

solve them through a provision, which other regulators can use to refer a dispute to the CCI.

CCI, like most other competition regulators in the world, believes that sectoral regulators would do well to deal with financial, technical and quality aspects with a view to taking care of the interests of investors and consumers and even the public at large, but not with competition *per se*. Of course, they ought to have the goal of introducing competition through their policies as and when there is no conflict between their other objectives and a competitive market. Sectoral regulators would do well to use their policy tools to bring down natural monopolies and enable networked industries to untangle and operate in a competitive market. But they do not have to replicate the competition regulator's role.

It is a largely accepted theory that sometimes needs an external (regulatory) intervention to create and protect vigorous competition, which is touted as an antidote to the so-called ills and suicidal tendencies of free market. Paradoxically, almost every act of deregulation aimed at freeing the market, seems to necessitate a new form of regulation, often with anti-competition effects.



**The conflict between competition regulators and other sectoral regulators and government policies is a global one, with various countries witnessing its consequences in one way or the other. In India, the saga has just begun, as the CCI is soon to be able to enforce the Act.**

**Commission Raps NIFT**

The National Institute of Fashion Technology (NIFT) has been rapped by Delhi State Consumer Commission for refusing to refund around Rs 3 lakh in fees to a girl, who was denied admission at its Delhi Centre.

The Commission took to task the country's premier fashion institute for forfeiting the fees of Shikha Goel, who wanted to withdraw from the course after she was allotted a seat at its Kolkata centre while she applied for Delhi.

Slamming the State-run institute, the Commission dismissed NIFT's appeal against a Consumer Forum's order and said that any clause which stated that fees once paid was non-refundable was "highly unconscionable and unfair".

(ET, 08.10.07)

**Competition Act Criticised**

The Confederation of Indian Industry (CII) has criticised the recently amended Competition Act, which seeks to regulate combinations, mergers, acquisitions and amalgamations.

The procedure entails companies of certain size based on asset/turnover to seek prior approval from the Competition Commission of India for merger and acquisition, a process which may take up to 210 days.

The industry body said that the move would negatively affect the growth of the Indian economy as, "over-regulation and procedural hurdles such as pre-notification of all mergers could prove to be counter-productive and thwart India's economic growth".

(FE, 23.12.07)

**Cement Cartel under Scanner**

The Monopolies and Restrictive Trade Practices Commission (MRTPC) has found top cement companies guilty of cartelisation under the aegis of Cement Manufacturer's Association (CMA) during the period February to April 1990.

The Commission started its inquiries in October 12, 1990 into possible cartelisation by cement companies after its investigative wing – Director General (Investigation and Registration) – alleged that CMA along with its companies "have been

**Ex-babus not in Watchdog Seat**

Regulatory boards may cease to be a parking lot for retired secretaries any longer. The Government is considering a proposal to bar secretaries to Government of India from taking up the job of a regulator immediately after their retirement.

This bar would remain for a period of at least two years after their superannuating from the respective ministry. Only after this period, their candidature could be considered.

The move is aimed at ensuring objectivity in regulatory decisions. It is felt that it was difficult for regulators to take objective decisions on policies that they may have drafted during their tenure as secretaries.

The role of a regulator has immense importance in the liberalised regime as steps have to be taken to protect consumer interest and ensure fair competition within the policy parameters.

Once implemented the new guidelines would put a rest to the practice of appointing favoured secretaries.

(ET, 26.11.07)

fixing the prices of cement in an arbitrary and unjustified manner keeping the prices of several cement manufacturers in the same region uniform in spite of the fact that cost of production of different units would be different".

The Director General also observed that prices of cement were being increased at short intervals from time to time without any corresponding increase in the cost of production which would amount to manipulation of prices so as to impose on the consumers "unjustified cost and restriction".

(BL, 21.12.07)

**Investments Under CCI Lens**

The transactions of private equity (PE) firms like Merrill Lynch, Citigroup and Goldman Sachs may soon be subject to close scrutiny by the Competition Commission of India (CCI).

The CCI would step in if investments by a PE firm in a sector led to cartelisation that crippled competition. "What we are concerned about is whether PE investments in two or more Companies in the same sector is leading to anticompetitive practices", CCI member Vinod Dhall said.

However, he maintained that it would not interfere in the investment strategies of PE firms. There are around 250 PE funds operating in India, which have invested over US\$10bn in this fiscal so far.

The real estate and telecom sectors are the major parking spots

for their funds. The stand by the CCI is therefore significant, as PE investment has become the preferred route for a large swathe of Indian Companies.

(FE, 23.11.07)

**MRTPC to Probe Home Loan**

Puzzled by the way banks levy differing 'floating interest rates' from new and existing customers, the MRTPC has initiated a probe into how lending institutions arrive at these rates.

After receiving complaints from existing home loan customers that they were not offered the benefits of low interest rates extended to new customers, the MRTPC directed its investigation arm DGIR to probe how banks can arrive at two different rates, although the benchmark rate – floating reference rate is only one for each institution.



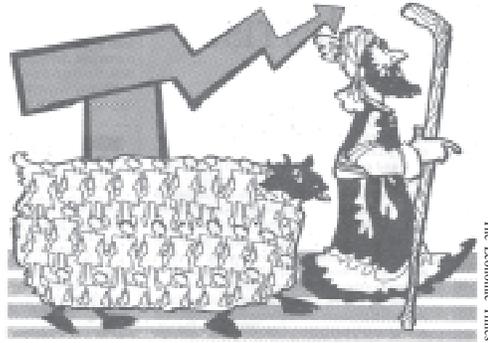
According to sources, the MRTPC feels that the practice of banks using low interest rates to woo new customers while forcing the old ones to pay higher rates was discriminatory and restrictive under the MRTP Act.

(FE, 23.11.07)

# Who Needs Democracy?

– T K Arun

**Indian industry needs democracy, and desperately. The Indian economy's sustained growth today is hostage to incomplete democracy, never mind all that champagne spilled on plush carpets of the rich growing richer while toasting the vaulting Sensex.**



Today, millions of Indians can only stand and stare as spectators while a tiny minority races, twinkle-toed, towards prosperity. Unless these resentful bystanders are transformed into joyous members of the procession, the music will soon stop and the dancing turn into a stampede of the kind that follows a bomb blast at a public place.

Cassandra-like scaremongering? Many Latin American countries have registered decent growth rates under the iron rule of military dictators. So did Korea till the late 90s. Assorted authoritarian governments have presided over impressive economic performance in much of east and south-east Asia for long periods. Even today, the fastest growing large economy of the world, China, is governed by an authoritarian, rather than a democratic, regime. So why should India alone need democracy for sustained growth?

In fact, it is often argued that India's democracy is actually a hindrance when it comes to economic growth. After all, democracy does mean slower decision making with all its greedy politicians, bungling bureaucrats, miles of red tape, self-seeking unions, environmental fundamentalists, trigger-happy litigants, other assorted, competing stakeholders, all translating into a thousand outstretched palms waiting to be greased.

We could examine the vast literature examining the relationship between capitalism and democracy, their parallel historical growth, their shared common foundations in the freedom of individuals, institutional rather than arbitrary functioning, etc. Decentralised decision-making, which is at the heart of a vibrant, competitive market economy, cannot really happen in an authoritarian political structure, which would curtail freedoms of choice and action in assorted spheres.

So, authoritarian polities are unlikely to produce sustained efficiency in the economies they govern. India consumes as much as two-thirds of its output and squeezes out nine percent growth from the one-third of its output that it saves and invests. Clearly, India's bumbling democracy is not all that inefficient when it comes to making effective use of resources!

But the practical point is that it is not possible for India to dispense with democracy, whether to rid the economy of the inconveniences arising from democracy or for any other such noble enterprise.

## Consider some of the constraints:

**Inability to obtain land for large projects:** Nandigram has become a metaphor for forcible acquisition of agricultural land for industrial development and the violent resistance that follows. The only reason farmer's still resist industrial advance is that they see no stake for themselves in that development. Rather, they see themselves being deprived of their basic source of sustenance, with only bleak uncertainty about the future being offered as compensation.

This is failure of democracy. Advancing the collective good, and simultaneously minimising and mitigating the costs borne by some sections while pursuing that common good, are integral to democracy. This does not

happen in India. People have no faith it would happen, even if it is promised by politicians and the administration. This reflects absence of real empowerment of the people, which is the cornerstone of democracy.

This failure of democracy gets compounded by the forms of competitive politics characteristic of democracy. Posco, the Korean steel major that came to India with a \$12 billion project, has not been able to get going after years of struggle with the political and administrative establishment. A stone throwing mob, assembled easily enough, is enough to close down organised retail in Uttar Pradesh.

**Consider communal and caste violence:** This simmers under the surface, fanned by cynical politics that feeds, ultimately, on the huge gap between the political and social consciousness of much of India and the norms of liberal democracy enshrined in the Constitution.

**Consider shortage of electricity:** The problem here is theft – patronised, ultimately, by politics. Patronage of power theft is part of a larger malaise. The entire exchequer is seen by the political class as fair game, the rightful fruit of power. This just would not happen in a system where the people have some real control over the government supposedly working for them.

**Consider the traffic snarls in Bangalore or Mumbai:** The state governments' apathy has its roots in another failure of democracy, the huge disconnect between the prosperity of the cities and life in the countryside, where the voters reside.

And let us not forget the harsh reality that more than one-fourth of India's 593 districts are now officially classified as Naxalite-affected. Civil strife takes a daily toll in Kashmir, the Northeast and different other parts of the country.

For an environment free of the threat of random violence and crime, crucial for security of life and prosperity, industry needs democracy to grow. There is no alternative.

– Senior Editor, Economic Times. The article appeared in the Economic Times, November 08, 2007.

# Inequality Threatens India's Economic Boom

– Jo Johnson

When a 25,000-strong army of landless workers, indigenous tribespeople and “untouchables” from the bottom of Indian society marched 320km to Delhi to highlight the growing divide between haves and have-nots, they were met with crushing indifference. Admittedly, their timing was bad: Mumbai's Sensex index punched through the 20,000 mark for the first time, triggering orgiastic self-congratulation by the English language media and eclipsing all other national news.

“The first 10,000 took over 20 years. The next came in just 20 months. Superpower 2020?” rhapsodised the front-page headline

of the Economic Times, the cheerleader for a phenomenon it calls the “global Indian takeover”. In their excitement, several other newspapers double-counted the value of all Mukesh Ambani's stakes in various listed Reliance entities and erroneously concluded that he had overtaken Bill Gates and Carlos Slim to become the wealthiest person in the world, with investments valued at \$63bn. Although that joyous moment may not be far off – the elder Ambani is worth nearer \$50bn – it has not come yet.

As first-world India cheered the stockmarket, there was scarcely mention of the visitors from third-world India who had camped overnight in the old city. Feet swollen, mouths parched and hair matted, the protesters were physically detained in a gated enclosure throughout the day, denied the satisfaction of completing the symbolic last leg of their march down Parliament Street. The city's police force had instructions to keep the capital spruce for visiting dignitaries, among them Angela Merkel, the German chancellor, Henry Paulson, US Treasury secretary, and dozens of chief executives in town for a lavish conference organised by Fortune.

The chief executives cocooned in the sandalwood-scented splendour of the Imperial Hotel would have learnt far more from the marchers than from the predictable fare on offer at the conference. From the stunted and wasted frames of the landless, they would have observed how malnutrition rates, already higher than in parts of sub-Saharan Africa, are rising in many places, as wages lag behind soaring food prices. They would have learnt how the 120m families who depend on the land for subsistence agriculture, generating no marketable surplus from one season to the next, live in terror of expropriation by state governments operating land scams in the name of development.

Fobbed off with promises of a committee to discuss land reform, the Gandhian leaders of the protest march sent a warning to the government: advocates of non-violent



***It is a fair bet that when the ruling elite of a poor developing country ignores a non-violent protest by 25,000 desperate citizens, it will soon face a violent one.***

swathes of the country, is real. Posco, the South Korean steel group, knows from experience. Its plans to invest \$12bn in a new plant in the Naxalite-infested state of Orissa, potentially the largest foreign direct investment in Indian manufacturing, have been stalled by protests for nearly four years: four of its officials were even kidnapped by locals deeply sceptical of promises of compensation and rehabilitation. They have been released, but the company is no nearer to taking possession of the several thousand acres needed.

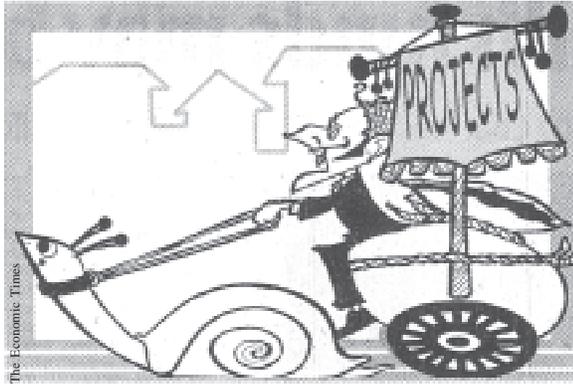
Posco's story highlights a much deeper crisis. It should raise important doubts about whether India will be able to attract the investment required to sustain its recent growth rates of more than 8.5 per cent. Investment as a share of gross domestic product has indeed risen sharply over the past three years, but it is skewed towards services. Attempts to start an industrial boom have backfired: a plan to promote Chinese-style special economic zones degenerated into a real estate racket. It displaced hundreds of thousands from their land, many of whom went uncompensated. The protests are becoming more violent: two people were shot this weekend as they fought plans for a chemical plant on 9,000 acres in West Bengal.

As no image-conscious investor wants blood on their hands, it is hardly surprising that FDI in Indian manufacturing has recently been declining. During the 12 months to January 2007, it fell to just US\$1.5bn from US\$1.8bn the previous year, according to Morgan Stanley. Manufacturing, notwithstanding pockets of excellence, is struggling to become globally competitive and failing to play its traditional role as a sponge for surplus rural labour. It is a vicious circle: until the hundreds of millions who eke out a subsistence existence in the villages are given reason to believe they will receive fair compensation for the loss of their land and incomes, and not just hot air, they will fight tooth and nail for the *status quo*, miserable as it is.

– Financial Times' South Asia bureau chief. The article appeared in the Financial Times, October 31 2007.

# India's Infrastructure: A Reality Check

– Mukesh Kacker



*India's physical infrastructure is pretty abysmal is an accepted fact. What is heartening is that it has started getting the kind of attention which is essential for catapulting it to the top of the national agenda.*

Earlier in 2007, when rising inflation caused serious concern, a debate ensued on its causes. Though the monetarist view is that inflation is largely a monetary phenomenon, many scholars were of the view that in this particular case infrastructure bottlenecks were also responsible for overheating the economy, since the massive demand generated by an economy growing at nine percent for close to four years could not be satiated by the supply of inputs reduced to a trickle by infrastructure bottlenecks.

The Planning Commission made projections of investment in infrastructure during the 11<sup>th</sup> and 12<sup>th</sup> plans. It has been estimated that for the economy to continue to grow at nine percent, the total investment in infrastructure during the 11<sup>th</sup> and 12<sup>th</sup> plan periods would have to be of the order of Rs 20,18,709 crore and Rs 40,55,235 crore respectively.

This concern is welcome. Despite the fragile nature of contemporary Indian coalition governments and the divisive politics being played out on the national political stage, a stage has been reached from where no future Indian government could turn its back on infrastructure creation. What remains an area of concern, is the excruciatingly slow pace of infrastructure improvements at the ground level.

The capacity of the Indian economy to absorb investment would largely depend on three crucial factors – the regulatory environment for attracting private investment, the intellectual capacity of managers, both public and private, to structure projects in a transparent and achievable way, and a 'fire-in-the-belly' attitude to deliver quality products before deadlines.

The Union Government has rightly realised that the way forward is either through Public Private Partnership (PPP) projects or through pure private investments. A number of initiatives have been taken in streamlining contract award procedures, formulating model concession agreements, building viability-gap funding windows and finalising a panel of advisers to structure projects for the private sector.

The sector is spread over many ministries, each wanting its say in deciding how projects are to be structured and bid while many related issues are dealt with exclusively by the Ministry of Finance. There is a crying need for a ministry of infrastructure development, directly under the PM, to put in place a standardised and seamless regulatory environment in the entire country for infrastructure development.

The second factor refers to the quality of education and training of the managers of the stakeholders. Structuring and delivery of projects require thorough understanding of the general and specific issues. The reality is very different and the quality of conceptualisation of PPP projects has been rather poor till now. The current stand-off between Delhi International Airport Ltd

(DIAL) and the Ministry of Civil Aviation over DIAL's interpretation of certain clauses of the contract raises an apprehension about the PPP project itself being poorly conceived.

At the tertiary level, things are even worse. Most of the projects relating to water supply and sanitation fall under the jurisdiction of local bodies, institutions where the very concept of capacity building is alien. Capacity building of public sector as well as private sector managers, therefore, should be accorded a very high priority.

The third factor pertains more to the nebulous realm of pride in one's country and work than to lack of knowledge. The tragedy of India is that a large percentage of people are immune to feelings of pride or shame in their own work. The Gurgaon-Delhi expressway was supposed to take 30 months for completion; it is still not ready even after 60 months. Yet, nobody feels ashamed enough to do something about it.

Parking facilities both at the domestic as well as at the international terminal appear to belong more to the 18<sup>th</sup> century than to the modern times. Yet, the effort of the private sector party which has been given the concession to modernise the Delhi airport seems to be more on exploiting the commercial opportunity around the airport than in giving the consumers a decently managed amenity. An unbiased observer cannot but come away with the observation that Indians are largely content with mediocrity.

One should not get carried away by the hype of nine percent growth or by a smug satisfaction of being compared to China. A little bit of reality check will do us no harm. China is light years ahead of us in core infrastructure. The challenges before the country are not dearth of public funds and private investment but absence of enabling environment, dearth of quality human resources and lack of pride.

– A former civil servant heads an infrastructure consultancy. Abridged from an article that appeared in *The Economic Times*, November 22, 2007.

# Regulate the Regulators

– Sunil Jain

Now that an airport regulator is expected to be in place soon, most expect former civil aviation secretary Ajay Prasad to get the job. And when the current ports regulator retires, it is widely expected that current shipping secretary A K Mohapatra will succeed him. Not surprisingly, since with a few expectations such as S L Rao, who was the country's first central electricity regulator and Justice Sodhi, who was the first telecom regulator, most regulators have been retired bureaucrats, and often from the same sector as well.

So, while Pradip Baijal was disinvestment secretary before he became the telecom regulator, the current telecom regulator Nripendra Misra was telecom secretary when he retired and the central electricity regulator AK Basu was power secretary before he took up his new assignment. The post was kept vacant for nearly ten months till Basu retired, whether deliberately or as a matter of chance is something that can only be a matter of speculation.

While the fact that most regulators are ex-bureaucrats does seem a bit odd, what really matters is their record. Sadly, however, their record has been quite poor. SL Rao is the exception since, as the country's first power sector regulator, he did manage to put in place some basic rules to help govern the sector, though some of these got watered down after he left. Justice Sodhi got removed for his efforts at imposing discipline and behaving as if he was in charge of the sector.

As a result, most regulators have tended to toe the ministry's line. So, Baijal gave the recommendations that allowed Reliance Infocomm to legalise its mobile phone operations and the government was quick to accept them; and when the favoured firm was caught changing the telephone numbers on international calls to avoid paying the mandatory access deficit charges, Baijal refused to punish the

firm even though it was part of his job. For one, he was the person that fixed the access deficit charges and second, by not paying these charges, Reliance Infocomm was able to offer cheaper long-distance services than its rivals-maintaining a level playing field was one of Baijal's jobs.

Misra, who is now complaining that the government has cherry picked his recommendations, refused to take the opportunity he got to clean up the method of allocating scarce spectrum, preferring instead to follow the existing system and even gave

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*The record of bureaucrat regulators has generally been very poor*

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contradictory recommendations – while he recommended that no company be allowed to own more than 20 percent of the equity in another telecom firm in the same circle on the grounds this reduced competition, he did not think this flew in the face of the recommendation that CDMA mobile phone firms be allowed to offer GSM mobile services in the same circle! And he increased the number of subscribers required for each chunk of spectrum without even inviting the mandatory comments on the subject – not surprisingly, this created the impression he'd done the minister's bidding since existing firms found their spectrum path choked off while Reliance found another back-door

entry this time into the GSM mobile space.

If this is the record of bureaucrats who become regulators, the government needs to seriously reconsider the strategy of appointing them to these posts. More so since, as bureaucrats, they've either contributed to the mess in the sector or have paid scant attention to fixing the problem. Thus, as civil aviation secretary, Prasad failed to see that the evaluation process for the privatization of the Delhi and Mumbai airports was biased in favour of the Anil Dhirubani Ambani Group and even tried his best to award the deal to the group after this was pointed out. Nor did Prasad take any action against the global consultants who were caught fudging the marks. And, as the controversy over the Delhi airport snowballs, it may just be that the contract signed under Prasad's watch was not exactly ironclad.

Mahapatra's tenure as shipping secretary has been equally listless and little has been done to fix the cost-plus nature of tariffs. Indeed, while it has been shown that bidding on revenue shares is a bad idea, under Mohapatra's stewardship, two more ports were privatized with revenue shares of more than 40 percent. If a company has to part with 40 per cent of its revenue and still make profits, the only conclusion is that the firm is changing monopoly tariffs-if, however, the tariffs are fixed at competitively bench-marked levels, then the company offering to share 40 percent of its revenues has to either chest, go bust or renegotiate; there is no fourth option.

Given how important infrastructure is for the country's growth, and the billions of dollars that need to be invested here, not getting world-class regulators is asking for trouble-to paraphrase Indiresan's law, second-class regulators will give third-class infrastructure.



## ReguLetter

The highlight of the October-December issue of ReguLetter is the cover story, “Engaging Civil Society to Promote Competitive Reforms in Developing Countries”, which suggests that civil society organisations (CSOs) must develop understanding of how an effective competition regime can promote economic democracy and good governance, protect consumer interest and aid poverty eradication efforts in the developing world.

Among regular sections focusing on news, views and policies related to corporate restructuring, regulations of utilities and finances, corporate governance etc., of different countries, in particular the developing nations are other attractions. Besides, it covers annual roundup of competition laws, mergers & acquisitions, corporate issues, which will provide the readers a very good reading.

A special article by Dimpho Mashaba entitled, ‘Botswana: Does Privatisation Develop Economy?’ urges that privatisation is not a panacea for economic growth and development. About a Competition Law dwells on the competition scenario in Nigeria, the institutions of competition law in the country and the scope for improvement in the law.

*This newsletter can be accessed at:*

<http://www.cuts-international.org/pdf/reguletter4-07.pdf>



## CIRCular

CIRCular a quarterly newsletter of CUTS Institute for Regulation and Competition (CIRC), carries a brief on the panel discussion entitled, ‘The Political Economy of Regulation in India – what do we need to do’ jointly organised by CIRC and CUTS Centre for Competition, Investment & Economic Regulation (CUTS C-CIER) in Mumbai on October 16, 2007. In essence, the note tries to capture the major highlights of the discussion.

Special article by Pradeep S Mehta entitled, ‘Fair Competition Vigilance’ articulate the need to adopt Competition Act, 2007 to raise level of awareness so that anticompetitive practices prevailing in the market could be identified. The section ‘News & Views’ carries glimpses of the events and activities of CIRC during the period.

*This newsletter can be accessed at:*

[http://www.circ.in/pdf/circular9\\_oct-dec07.pdf](http://www.circ.in/pdf/circular9_oct-dec07.pdf)

## Work of Scholarship Needs to be Applauded

Thanks for sending a copy of the research report entitled ‘Competition and Regulation in India, 2007’. This Report reminds the government of its commitments in the area of competition and regulation and highlights aspects that remain unaddressed. One of the most significant sections of the Report is ‘How does competition policy ensure pro-poor development?’ This is arguably one of the most pressing issues that we face, domestically and internationally. The Report aptly summarises that competition law and policy is not a luxury of the developed world, but an indispensable tool for developing countries in their fight against poverty.

The Report outlines the prima facie agenda towards economic freedom which includes adopting a National Competition Policy by March 2008, establishing and operationalising a Competition Policy Council by July 2008 and other steps including implementing regulatory reforms and competition rules.

I am sure that this Report will prove to be a useful document for both the polity and bureaucracy of the country. This work of scholarship needs to be applauded.

**Sunil Arora**

*Principal Secretary to Chief Minister  
Government of Rajasthan*

## SOURCES

ET: The Economic Times, BS: Business Standard, TH: The Hindu, BL: Business Line, FE: The Financial Express, HT: Hindustan Times, FT: The Financial Times

The news/stories in this Newsletter are compressed from several newspapers. The sources given are to be used as a reference for further information and do not indicate the literal transcript of a particular news/story.