

# Welcome Move for Affordable Drugs

Pooled, prepaid healthcare is the best route

Prime Minister Narendra Modi says the government will bring in a law to ensure doctors prescribe low-cost generic medicines. Any move is welcome that seeks to put an end to the pharma industry taking advantage, with the help of doctors, of the information asymmetry that exists between those who prescribe medicines and those who buy them. However, this is only a second-best solution that would be required in the absence of a comprehensive system of healthcare on the lines of the one the present government has proposed. Exorbitantly priced medicines have no place in a healthcare system in which all costs are prepaid and pooled, and the healthcare provider has no incentive to inflate costs because that would only eat into its own income. Pending the rollout of such a comprehensive system of healthcare that puts paid to out-of-pocket expenses and aligns the incentives of insurers and healthcare providers, a switch to generics from expensive branded drugs would cut costs.

But there would need to be some riders. To begin with, we need a robust legal and regulatory framework to fix drug quality. Quality can be assured by enforcing adherence to rigorously established technical standards, supplemented by competition among different manufacturers. There could be a role for branded generics, even if doctors prescribe only generics. A third leg of helping consumers find affordable drugs of assured quality would be to develop smartphone applications that can list different manufacturers' prices for the generic prescribed by a doctor as well as nearby pharmacists who stock them.

In 2016, the Medical Council of India (MCI) had reportedly amended the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 and issued directives to the physicians to prescribe medicines legibly and only in their generic names. Nothing has changed. Regrettably, MCI has failed as an apex regulatory authority and must be disbanded. The government's focus should be on implementing the national health policy it has proposed, after ironing out some glitches.

# Fully-Manned State, Effective Governance

The government or public sector in the country suffers from chronic problem of vacancies. Core areas of government activity — education, healthcare, police, defence and judiciary — are short-staffed by as much as 20% to 50% of their required or sanctioned strength. This is strange for a country where manpower abounds, given a population of nearly 1.3 billion, of which 31% is in the age group of 21 to 44 years, and organised sector jobs are scarce.

Filling the vacancies — ranging from primary schoolteachers to judges — will require systemic changes and innovative staffing options. Hiring must be transparent and rule-based. Political interference leads to skewed deployment of personnel, most evident in appointment of teachers and healthcare personnel, who lobby local politicians to seek transfers away from rural areas. The preferred urban and peri-urban areas are overstaffed, resulting in inefficiencies. Next, hiring must be decentralised for some of the sectors such as schools, medical centres and police. Local authorities and institutions should be encouraged to hire from the area. This will create local accountabilities, and ensuring that those employed understand the local realities and have a stake in delivering on their job. In time, it will result in responsive government institutions. Training is an issue, but in some cases, a rigorous system of on-the-job training and incentivising further education opportunities will solve the problem.

There is no one solution to the problem of shortages in core areas. The government needs to have a menu of solutions, adopting those that are best suited for the sector, and the population being addressed. Whatever the options, these must be transparent, rule-based and non-discriminatory.

PM prescribes greater legibility from medicos penning prescriptions

# Modi Tells Doctors to Get It Write

If PM Narendra Modi had his way, Omar Khayyam might well have had to redact his pronouncement that the poet believed was engraved in stone, "The Moving Finger writes; and having writ/Moves on: nor all thy piety and Wit/ Shall lure it back to cancel half a line,/ Nor all thy Tears wash out a word of it." According to the PM's latest diktat, the "Moving Fingers" of doctors making out medical prescriptions must ensure that the writing is legible, with all the i's dotted and the t's correctly crossed. Medical prescriptions are legendarily near impossible to read, a fact many pharmacists take advantage of to dupe customers into buying costly branded drugs when their cheaper generic variants are available.

That big pharma can be big harma is underscored by the story of the terminally ill patient who, cured, went to thank his doctor and promptly succumbed to a fatal heart attack when presented with the homonymous bill for his treatment. However, the PM's injunction of 'Physician, heal thyself' could well backfire on the political class as a whole. Netas across the board in their election manifestos prescribe cure-all panaceas for all the many ailments from which our body politic only too obviously suffers. But once the polls are over, no amount of spin-doctoring can disguise the fact that all those electoral prescriptions were pure gobbledegook.

Treating IP as an investment, and subjecting it to treaty arbitration, can have undesirable impact

# Intellectually Challenging

Feroz Ali & Devika Agarwal

Global giants like Vodafone and Cairn Energy have raised investment disputes against India by initiating arbitration proceedings under investment treaties. Free trade agreements (FTAs), like the Regional Comprehensive Economic Partnership that India is currently negotiating with other countries, tends to treat intellectual property (IP) as an investment made by investor corporations, allowing private investment disputes to be raised against the host country whenever there is a threat to their IP.

Treating IP as an investment, and subjecting it to treaty arbitration, can have undesirable impact on the hard-bargained flexibilities in IP laws and on public health safeguards that India has earned over the years.

## Patent Problem

Recently, US pharmaceutical company Eli Lilly lost an investment dispute initiated under the North American Free Trade Agreement (Nafta) challenging Canada's patent laws that could have potentially divested Canada of approximately ₹2,500 crore in damages. Eli Lilly challenged the invalidation of its patents by Canada, and the Canadian disclosure utility doctrine that mandated a high threshold for patentability.

Had the arbitral tribunal upheld Eli Lilly's claim, it would have invariably pressurised Canada to change its patent laws and offer greater protection to the company's drugs, thereby undermining Canada's access to the medicines programme. While dismissing Eli Lilly's claim, the tri-

bunal ordered it to pay only 75% of Canada's legal costs. Tellingly, the legal expenses to conduct arbitral proceedings can itself amount to millions of dollars.

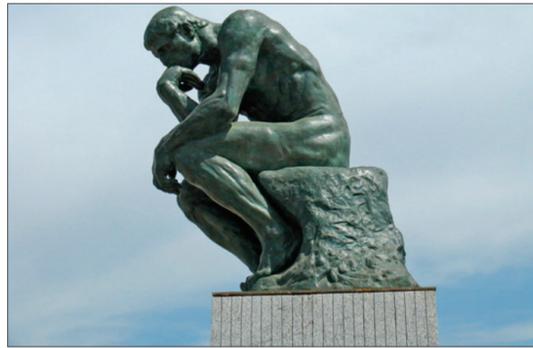
Countries enter into bilateral investment treaties (BITs) to facilitate international trade and investment that predominantly happen through corporations. BITs typically incorporate investor-state dispute settlement (ISDS) clauses under which investment-related disputes are submitted to international arbitration instead of domestic courts. The mere filing of ISDS disputes can also achieve the objectives of the corporations.

Under the BIT regime, Gilead Sciences, a US-based pharma company, challenged Ukraine's grant of permit to manufacture generic versions of Gilead's blockbuster Hepatitis-C drug, Sovaldi. Ukraine ostensibly yielded to Gilead's demands by signing a confidential 'amicable agreement' with the company.

By allowing investor corporations to sue host states for millions of dollars in investment-related disputes, the ISDS mechanism empowers private investors to influence the host country's laws in the investors' favour.

Companies often adopt the strategy of treating IP as an investment to demand higher levels of IP protection by suing for 'expropriation' under BITs in case of threat to their IP, as the definition of 'investment' includes IP. This was witnessed in the Australian Plain Packaging case, where Australia mandated plain packaging of tobacco products, disallowing companies to use their trademark on cigarette packets. US tobacco giant, Philip Morris, sued Australia for expropriation of its IP under the Australia-Hong Kong BIT.

Fortunately for Australia, the tribunal dismissed Philip Morris' challenge



Something to think through

for lack of jurisdiction. Had Australia lost the arbitration, it could have been compelled to suspend its plain packaging rules and also pay damages amounting to above ₹6,500 crore.

## Smoked Out

When the investment tribunals rule in favour of MNCs, it serves as an impetus for investor corporations to bully countries into changing their laws and removing legitimate public health safeguards. Despite the findings of the Philip Morris and Eli Lilly cases in favour of the host countries, there are serious issues with the ISDS system. Even where the investor's claim is eventually dismissed, filing of such claims against a country could deter other countries from adopting similar public health safeguards.

Treaty arbitrations are expensive, unpredictable and can potentially undo the advantages gained in incorporating public health protections in our IP laws. India may consider excluding measures concerning IP such as revocation and grant of compulsory licences from the ambit of the BIT. Further, India could also incorporate public health safeguards into the BIT itself, so that a ruling given by a tribunal must consider these as legitimate exceptions in cases where ex-

propriation of IP is claimed. Another approach would be to redefine investments and investment-related disputes so as to exclude matters concerning public interest.

While these measures have been incorporated by India in its revised Model BIT treaty, the safest option will be to exclude IP as an investment for two reasons. First, the probabilistic nature of IP should exclude them as an investment as they may or may not result in a registration. At best, the money spent in acquiring these rights can be treated as a pre-operational expenditure (a category excluded from the definition of an investment).

Second, the Model BIT defines investment by referring to "the party in whose territory the investment is made". IP does not fit into this definition as, in most cases, IP is created by investments made in another country and are merely brought into India for the purpose of registration. The logic used in the Model BIT for excluding goodwill and other intangible rights from the definition of an investment should be extended to IP to ensure that we don't offer to protect as an investment what is not made here.

Ali is the IPR Chair Professor, IIT-Madras, and Agarwal is a Delhi-based lawyer

Companies treat IP as an investment to demand better IP protection by suing for 'expropriation' in case of threat to their IP, as the definition of 'investment' includes IP

**WIT & WISDOM**

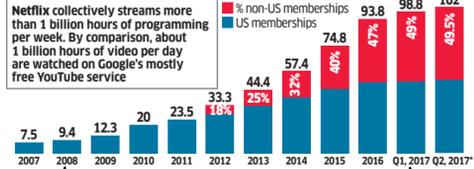
"We have a system that increasingly taxes work and subsidises non-work."

Milton Friedman  
Economist

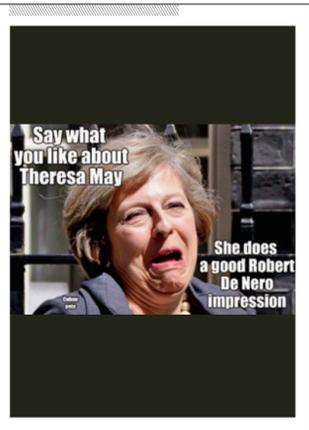
## Netflix Nears 100m Mark

Netflix says it is on the verge of surpassing 100 million global subscribers. And by the year-end, the majority of its members will be overseas. In terms of subscribers, Netflix is still behind pay-TV channel HBO, which has 134m global subscribers, including viewers paying for an internet-only version that was inspired by Netflix's success...

**Total Netflix memberships (in million)**



## MEME'S THE WORD



## Just Enjoy Your Mango

PRAVIN SHANKAR MEHTA

The first and foremost of all thoughts in the human mind is the primeval thought "I". Only after this thought, other thoughts arise. Ramana Maharishi says, if you could mentally follow this "I" thread until it leads to its source, you would discover that the first thought to appear, is also the last to disappear.

It is the ego-sense that gives birth to the thought "I". The ultimate reality, the self, is obscured by the illusory appearance of this ego-sense, the root cause of all misery and discontent. In following the question "Who am I?" a state would be achieved in the end where all doubts and questions that assail the human mind, strictly limited by sense perceptions, would just fall away like a tree's dry leaves after a strong wind.

The sense of "I" pertains to the body and ego-ridden mind, which ceases to exist in the ego-less state. To the Buddha, this is nirvana; Christ calls it the kingdom of heaven; and Vedanta terms it moksha, or deliverance. So, a person does not lose himself; rather, he finds himself. This echoes what Jesus said, "Whoever shall seek to save his life shall lose it, and whoever shall lose his life shall preserve it." The moment primeval thought disappears, no doubts remain as the ego-sense no longer exists to raise them.

Ramakrishna Paramahansa advised his disciples not to waste time over metaphysical speculations. He said that you go to a mango tree to eat mangoes, so eat them and enjoy. Why waste precious time over counting the number of branches and leaves? It will be an exercise in futility.

## Chat Room

### A Regulator for Nursing Care

Appropos the news report, 'Generics Prescription to be Made Must' (Apr 18), the government should set up a regulatory authority on the lines of Trai, for regulating private hospitals and nursing homes that charge even the poor exorbitantly, for their services in the name of accommodation charges, operation charges, medical tests, doctors' fees, etc. Unless these bodies are stopped from looting the gullible, the prime minister's mission to provide affordable health services to the poor would be incomplete.

MAHESH NATANI  
Indore

### PSBs, Give Up Bad Practices

This refers to 'How to Unrob Our Banks' by Rana Kapoor (Apr 18). Pruning Primary Sector Lending by the PSBs is not justified as 65% of the credit disbursal is attributed to PSBs. The PSBs are doing yeoman service for the farm sector. Of course, the NPAs of PSBs are about 90% of all banks for which corporate loans are more responsible than farmers' debt. The falling valuations of PSBs is a question of quality of service rather than capital requirement. The PSBs should now reform the quality of service and adopt prudent practices.

SANJAY TIWARI  
Hisar

### Banks Not a Political Tool

Appropos 'How to Unrob Our Banks', our banking system is robust but GoI's populist moves have made them pile up NPAs, particularly the PSBs. Almost 90% of the NPAs are with PSBs because they help the government with dud schemes that are mainly to attract vote banks. RBI must come up with strict guidelines and the government must decouple its decision-making without any reprisals. Only then will banks truly cater to the pure financial needs of the country rather than serving and making them pliable to the vagaries of the self-serving political system.

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## WOMEN'S HEALTHCARE

# Here's to UP's Health



Abha Jaiswal

Uttar Pradesh, with a population of 200 million, would have been the fifth-most-populous country in the world. Its demographic profile has several concerns. But the most distressing statistic is its infant mortality rate (IMR), the death rate of children under the age of 1.

The IMR is a critical indicator of healthcare and human development. UP's IMR now stands almost the same as Ebola-struck Liberia (65), and worse than Pakistan (54) and Bangladesh (34). Although its IMR has improved from 73 to 64 deaths per 1,000 live births over the last decade, there is still much work cut out for UP chief minister Yogi Adityanath as he embarks on his promise of 'Sabka saath, sabka vikas' (With everyone, development for all).

The newly elected government has been voted into power through the active participation of women who heavily outnumbered men by a wider margin than in 2012. This new dynamic should compel the CM to do a lot more for UP's women. For long, women have been victims of social and cultural norms. But they also hold the key to the solution of many ills of the state.

It is important to juxtapose IMR with demographic and health indicators to comprehend the complex development challenges of the state. The IMR at 64 per 1,000 births is the highest in any state. The fertility rate — the number of children a woman has during her child-bearing years — is 2.7, higher than the national average of 2.2.

The male literacy rate stands at 82%, while it is only 61% for women. The sex ratio, at 912 women to 1,000 men, is significantly lower than the national figure of 940. Furthermore, UP has

over 59 million people below the poverty line, more than any other state.

UP's social development matrix is a compelling story. There is a clear need to re-examine it in terms of what US demographer Warren Thompson termed 'demographic transition'. Essentially, this means as regions develop, they transition from high birth and death rates to low birth and death rates. Fertility rates also go down only when child mortality rates start to decline.

How will this phenomenon be achieved? The obvious first step would seem to be to curb fertility. Over the last several decades, there have been strenuous efforts to stabilise the population in the hope that it propels economic growth.

At the micro-level, higher fertility means less investment in each child's nutrition, healthcare and education. Regrettably, UP has one of the highest levels of malnourished children. At the macro level, higher population growth demands greater investment devoted to expand the number of schools, clinics and other infrastructure, rather than investments made to improve quality of services.

One of the major impediments in achieving significant gains in family planning has been the lack of confidence, particularly among underprivileged families, that their children will

survive. Empirical studies suggest that the single, most vital step to encourage families to reduce fertility rates is to improve child survival. When families are assured that their children will survive, they are more likely to choose a small family size.

Survival rates are greatly affected by poor and inadequate public health services such as sanitation, immunisation and nutrition. Investment in these areas is, in effect, an investment in family planning. This would ensure a higher survival confidence and, in turn, reap the benefits in lower fertility rates, but would also help stabilise their population at the same time.

The decline in high fertility has to be achieved through a package of efforts and not limited to the family planning tool kit. Female education and empowerment is another area that needs focused attention and investment. Girls in school are likely to remain unmarried until a later stage and are likely to begin child-bearing much later.

Economically empowered women who are able to contribute in the labour market have a high opportunity cost spent in child-rearing. Therefore, on an average, they choose to have fewer children. Additionally, female education raises the status and earnings of daughters. This, in turn, will reduce preference for sons, a social norm that is precisely responsible for an unacceptable sex ratio of 912 women per 1,000 men.

There is an urgent need for the UP government to invest not only in public health systems but also in girls and women empowerment, in line with what the Swaminathan Committee Report in 1993 emphasised: the importance of improving the socioeconomic conditions, including the status of women and other marginalised groups, to achieve population stabilisation.

Soon after the landslide win in UP, Prime Minister Narendra Modi had tweeted, "When UP develops, India develops." For this to happen, the time has started ticking for CM Adityanath.



Can he be the healer?

The writer is a public health specialist

## Citings

### Personalised Marketing

JULIEN BOUDET ET AL

Companies experiment with testing the impact of varied customer experiences, but they do it in isolation. When they do try to scale, they smack against the challenge of understanding what to prioritise. The challenge has continued to plague marketers, despite the promise of solutions such as customer relationship management, master-data management and marketing-resource management.

These solutions can help companies consolidate and streamline data, manage segmentation, organise workflow and improve customer relationships. But they don't take full advantage of digital signals customers provide. Instead, relying on antiquated "list pulls", basic segmentation and campaigns, all lack the automated decision-making, adaptive modelling and data utilisation to scale personalised interactions.

Enter the Customer Data Platform (CDP) — a data discovery and "decisioning" (i.e., automated decision-making) platform. The CDP makes it possible for marketers to scale data-driven customer interactions in real time. And CDP is gradually becoming an industry-standard concept, with a small but growing cadre of third-party platforms emerging.

"Feeding" the CDP starts by combining as much data as possible and building on it over time. Creating models that cluster customer profiles that behave and create value in similar ways requires advanced analytics to process the data and machine learning to refine it.

From "The Heartbeat of Modern Marketing: Data Activation and Personalisation"