Opinion

FRIDAY, APRIL 7, 2017

GHOST OF WAIVER PAST?

Rahul Gandhi, Congress vice-president
@OfficeOfRG

Congress supports loan waiver for farmers bt this is only partial relief. Central Gov must respond to ease distress of farmers across country

Govt gets it right, sharp cut in kerosene subsidies

With more LPG being supplied, kerosene supplies down a fifth; per unit subsidy down by similar amount

A SHARP 20% cut in supplies of subsidised kerosene by the government in the first eleven months of FY17—this is more than double the previous high of 9% in FY13—along with an increase in prices by a similar amount, though desirable from the point of view of subsidy reduction, is probably political suicide. Yet, to the extent the results of the last set of assembly elections, including in the populous and poor Uttar Pradesh, can be seen as a verdict on the central government's policies on subsidy control, the BJP's moves seem to have passed the political test too. Possibly because, from day one, the Union government's stated policy on subsidy reduction has been gradual as well as one based on the availability of alternative energy sources—any reduction in kerosene supplies, the government was clear, was to be linked to more availability of either LPG or electricity for the poor. In the first eleven months of FY17, thanks to an all-out push to acquire new cooking gas customers in rural India—those that used either kerosene or wood-*chulhas* were the target customers of the Ujjwala scheme that has already given free LPG to 2 crore families in rural areas—LPG consumption in the country rose by more than 11%. While kerosene supplies fell from 6.3 million tonnes in the first 11 months of FY16 to 5 million tonnes in the same period of FY17, those of LPG rose to 19.7 million tonnes from 17.8 million tonnes.

Apart from reducing vastly-subsidised supplies of kerosene, the central government combined this with a policy of increasing the prices. It is true the hike in kerosene prices was not as steep as the 25 paise per litre per fortnight planned between July 2016 to April 2017, but nonetheless prices rose 22% between this period, from ₹15.4 per litre (in Mumbai) to ₹18.8 per litre. The 22% hike is on a par with increases in the retail price of petrol and diesel during this period—in the case of LPG, though, the reduction in subsidies has been a lot more dramatic, from ₹537.5 per cylinder in July 2016 to ₹737.5 in April 2017.

Since kerosene is supplied through state-government-run ration shops on the basis of lists provided also by state governments, success here has depended on their cooperation with the central government. Petroleum minister Dharmendra Pradhan managed to explain to the state governments that, with 40% of the vastly cheaper kerosene sold in the PDS being used to adulterate petrol and diesel, they too lose out on valuable VAT revenues as much lower quantities of both diesel and petrol were getting sold in each state—to that extent, the interests of both the central and state governments were identically aligned towards curbing the huge diversion of subsidised PDS kerosene. Taking an average VAT rate of 20% and applying that to the market prices of diesel and petrol, that works out to an annual revenue loss of around ₹3,500 crore for the states. As a result, Pradhan says, states began to cooperate with the Centre to provide lists of persons who deserve the kerosene subsidy and whittling it down wherever possible, keeping in mind the number of households that have got free LPG connections. As the central government reaches more houses through its Ujjwala scheme—the target is to reach 5 crore households by 2019, expect an even sharper fall in kerosene subsidies over the next few years.

Killing RTI

Letting an inquiry lapse if the applicant dies a bad idea

GIVEN HOW THE Right to Information (RTI) Act has become a powerful tool in the hands of citizens to ensure accountability from public authorities, it is only expected that the political class would want to shield itself from the kind of scrutiny this has enabled. To that extent, transparency activists have so far done well to resist attempts to change the Act/RTI rules, to reduce some of its powers. At the same time, given its increasing popularity, the sheer number of queries and appeals information officers, state and the central information commissions have to handle can be overwhelming—while over 11 lakh RTI queries were pending at the end of the reporting year 2015-16 across all public authorities in the nation, as of April 5, there were 5,252 complaints and 21,438 appeals pending at all information commissions, including the central one. The government could have had this in mind, and perhaps with an intent to ensure that the transparency system isn't clogged, it recently proposed introducing two provisions, on withdrawal of appeals and abatement of ongoing appeals, to the RTI rules. However, these provisions, innocent as they seem on paper, could have deadly consequences for information-seekers in the real world, and thus a chilling effect on RTI itself.

While the rules so far have been silent on withdrawals and abatement of appeals, the draft rules posted on the department of personnel and training website for inputs from the public allow the Information Commissions the discretion to permit the withdrawal of an appeal if the person making the request sends in a signed application. While this sounds logical and is the process in other laws—if a complainant is not interested, how can any proceedings go on?—it can end up encouraging threatening people into withdrawing their appeals. Similarly, allowing the proceedings to abate with the death of the appellant is also a bad idea since it can encourage people to try and get the information-seeker killed—the Commonwealth Human Rights Initiative lists 386 cases of attack or intimidation of RTI users in the three months of 2017 alone; 57 users were murdered, 157 were assaulted, 167 harassed or threatened while five killed themselves. Given the impact the law can have, the government will not only do well to revisit these changes, it could be more pro-active in each department putting out more information as a matter of course and on working on ways to protect those using RTI since, by definition, they cannot be protected under the whistleblower law until they are held to be whistleblowers—more often than not, those seeking RTI information are not even working in the organisations from which they seek information, which could be an essential criterion for being declared a whistleblower.

DataDEAL

The inventor of the worldwide web warns against the US's repeal of data protection rules

SIR TIM BERNERS LEE, a passionate advocate of digital privacy and the winner of this year's Turing prize—the Nobel of computing—will perhaps always be better known as the man who invented the worldwide web. So, when he terms the recent order US president Donald Trump recently signed, to overturn Federal Communications Commission rules on guaranteeing cyber privacy—introduced in the Obama presidency—"disgusting" and warns that this may leave us more "vulnerable" than before, Americans, and the world at large, better sit up and listen. The changes that Trump has enabled under the Congressional Review Act mean internet-service providers (ISPs) will no longer need to seek a user's permission to use, share or sell a user's data on web-loggings and browsing habits. To be sure, most websites, social media, apps and search engines that we use are anyway mining this data to, amongst other things, target ads better, in a user- or device-specific manner. But the key difference here is that these websites/apps mostly require our permission—some may restrict or forbid usage altogether if the required permissions are not granted, but that is a different story—and in some cases, offer the option to disable such targetting.

The best case scenario is, without the protections, there is nothing to American ISPs such as Comcast, Verizon and AT&T from tracking and selling users' data to advertisers—it can be argued that this is beneficial for the user with the latter being handed links to products/services that she might be looking for without having to bother with trawling the net. However, with a user's data meaning banking data, personal data, health concerns, shopping habits, political views, gambling and gaming habits, if any, and whatnot—based on the websites she visits—the fact that ISPs are free to sell it to anybody they get a request from without even having the need to ever ask her is a minefield. One misstep, and it could all go boom for the user. There is blackmail and fraud in the horizon, as is, perhaps for the worse, surveillance and even attacks. The American elections last year were clouded by the fact that Russian agencies were trying to hack e-mails of key people on both sides of the campaign. Imagine what could happen if a hostile entity could just set up a benevolent-looking front and access important data on important people by simply purchasing it.

THE ONLINE LEARNING RACE

THE GOVERNMENT MUST SERVE AS AN ENABLER AND INFRASTRUCTURE PROVIDER, RATHER THAN AS AN ENTITY THAT SEEKS TO DOMINATE CONTENT PRODUCTION, DELIVERY, AND CERTIFICATION

MOOCing India great

NIRVIKAR SINGH
Professor of economics, University of California, Santa Cruz

IN MY LAST COLUMN, I argued that Indian higher education needs reinvention as well as reform. The supply constraints that have built up in the current system will not be relaxed quickly enough by reforming current governance and regulatory institutions. Instead, India needs to embrace and accelerate digital delivery and learning. This prescription is valid for all levels of education, not just in colleges and universities. For example, field experiments by economist Karthik Muralidharan validate the benefits of digital tools for at least some aspects of education at the school level.

The government of India is fond of acronyms (NREGA, NRHM, PMGSY and so on), and it has indeed come up with a catchy one for its foray into online education. SWAYAM, which stands for Study Webs of Active-Learning for Young Aspiring Minds, is a platform for online courses, with the bulk at the university level, and created in partnership with some of India's premier institutes of higher education, such as the IITs. The more important acronym, however, is MOOC, which stands for Massive Open Online Course. SWAYAM now offers about 300 MOOCs for higher education, with the bulk of them in engineering, science and mathematics (though the last of these is surprisingly under-represented). In 2015, when SWAYAM had just launched, an article by George Anders in the MIT Technology Review noted that only three SWAYAM courses had been announced, so the pace of addition has not been negligible.

On the other hand, the two US-based MOOC pioneers, which are for-profit private enterprises working with partner universities, have about 2,000 and 1,400 courses, respectively, and feature courses from university faculty around the world. It is difficult to make a full comparison, but my sense is that SWAYAM courses have a considerable way to go to catch up with the MOOC frontier in terms of combinations of courses that provide requisite sets of expertise in various subjects, and in the quality of learning tools and interaction possibilities that the global market leaders provide.

This is not a cause for despair. After all, the Indian IT industry was disparaged in its infancy for not being up to international standards of sophistication. The industry thrived by identifying niches, competing globally, and getting some basic infrastructure from the government. The key to further progress will be a balanced role for the government, serving as an enabler and infrastructure provider, rather than as an entity that seeks to dominate content production, delivery, and certification. Indeed, if the government fails to play its role well, it will become irrelevant. As the article by George Anders illustrates, India-based students have flocked to the US MOOCs, making informed choices that supplement and enhance their existing Indian educations, and taking advantage of the quality and reputational value of the US-based offerings.

> Those who run the Indian higher education system are going to have to figure out how to take advantage of the opportunity that MOOCs offer to India's millions of students who are hungry for higher education and jobs but are currently poorly served. Perhaps the biggest supply constraint is that of quality faculty members

As the private MOOC providers expand, there is scope for them to undercut and bypass Indian higher education providers, if the latter do not respond.

Of course, there are limits to what MOOCs can do on their own, without some partnership with traditional physical providers. Online examinations designed for large scale courses can only go so far in testing knowledge, and there will still be a role for proctored and manually graded physical tests, but that role will definitely shrink. One can also take a cynical view that many Indian universities do not effectively prevent cheating in any case, and they do not impart useful educations that prepare students for productive jobs. If foreign competition can drive out substandard education providers in India, or force them to improve, then that is no bad thing.

One can certainly be suspicious of for-profit providers of education. In the US, some of them have a poor record of delivering quality, instead focusing on exploiting the US government's student loan program to extract high fees. The most egregious example of exploitation that comes to mind is Trump University (though the designation was not valid or deserved), which settled fraud suits out of court for $25 million.

But the private MOOC providers have partnered with the best brands in global higher education, and economics teaches that those with valuable brands generally seek to protect them.

Those who run the Indian higher education system are going to have to figure out how to take advantage of the opportunity that MOOCs offer to India's millions of students who are hungry for higher education and jobs but are currently poorly served.

Perhaps the biggest supply constraint in India is that of quality faculty members.

Those who are in India need to be incentivised to participate in and accelerate the ongoing revolution in higher education, and they also need to recognise that there is enough demand for their services as well as of the services of those who are producing MOOCs around the world. Once the basic delivery constraint is relaxed, further attention can be paid to making testing and validation of learning work at the scales needed.

Even here, best practices are encouraging in terms of results, as the anecdotes in the Anders article reveal. India's leaders have repeatedly failed its people, but in education, the people may have a chance to grow beyond what the leaders have allowed.

RBI delivers no surprise

Narrowing of LAF corridor indicates RBI may not allow interest rates' term structure to decline against the backdrop of abundant liquidity

SOUMYA KANTI GHOSH
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THE MONETARY POLICY committee (MPC) unanimously decided to retain the policy repo rate at 6.25%. However, with a view to ensuring finer alignment of the weighted average call rate with the repo rate, it was decided to narrow the LAF corridor to 25 bps from 50 bps with immediate effect. Though the reduction in overall corridor could be viewed as a precursor to a better and predictive interest rate regime, in terms of lower volatility of interest rates, it will clearly impart an element of downward rigidity at the lower end of the corridor. In fact, currently, RBI absorption of frictional liquidity surplus, primarily through term reverse repo with ceiling pegged as high as repo rate, also denies meaningful softening of operative overnight rate.

The narrowing of the corridor is perhaps an indication that RBI may not allow the term structure of interest rates to decline meaningfully against the backdrop of abundant liquidity. This may be an (a) attempt to ensure inflationary expectations are firmly anchored, and (2) acknowledgement of surplus liquidity remaining in the system longer than anticipated: hence, yields chasing surplus liquidity not declining significantly.

Interestingly, the Urjit Patel committee report has clearly stated that ultimately standing deposit facility will replace reverse repo as the floor of the corridor. If this is so, then the apex bank may be preparing itself for a downward floor on remunerative rate on surplus funds that banks may park with RBI.

In the Indian context, inflationary expectations have been consistently higher than actual CPI projections. This indicates the difficult part of inflation-targeting. If future inflation projection is kept higher, it may prevent inflation expectations from declining significantly, even as actual inflation may continue to fall. This may keep the rates elevated for a longer period of time than otherwise.

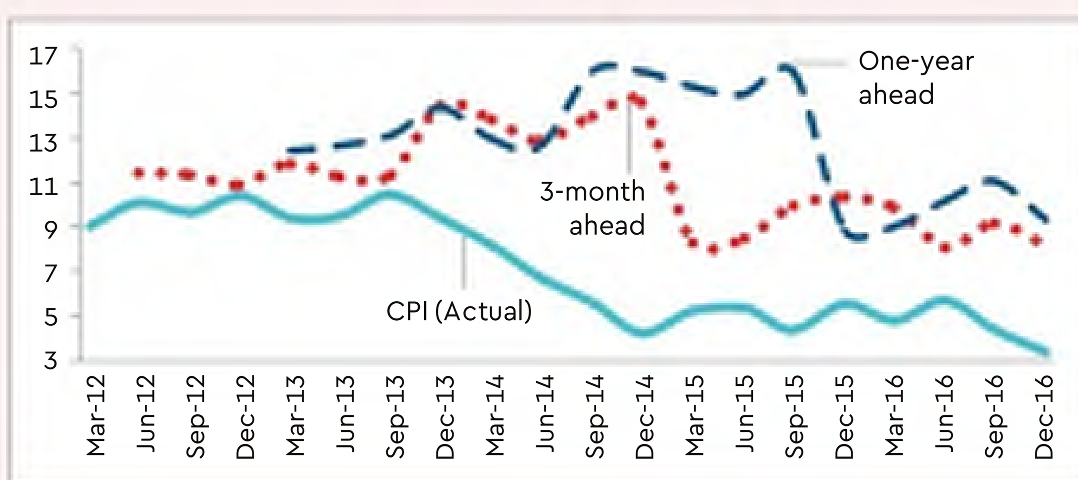
The success of inflation-targeting (IT) is sometimes overemphasised. Between 2002 and 2008, inflation declined in most of the countries in the world and this was mainly attributed to increase in IT-engineered productivity. The productivity rebound in global economy since 1995 has been widespread, with approximately two-fifths of the productivity rebound occurring in new economy industries (computers, semiconductors, software, and telecommunications). Overall, such higher productivity has led to lower prices, expanding demand and higher employment. To validate the above, we did analyse the productivity and CPI inflation data for inflation targeting countries. We found that in half of the 19 countries that we had studied, there was a structural break in total factor productivity after the adoption of inflation-targeting regime. Post that structural break, productivity increased in 12 economies, of which 9 economies exhibited a major decline in CPI inflation in post-break period compared to pre-break period.

For the year 2017-18, MPC has estimated that GVA growth rate would be at 7.4% compared to last year's growth projection of 6.7%, with balanced risks. The CPI inflation is projected to average 4.5% in the H1FY18 and 5% in H2FY18. Though MPC has considered balanced risks around the inflation trajectory, yet the rising probability of an El Niño event for monsoon 2017 and, subsequently, its implications for food inflation is seen as an upside risk. It should be noted that even on account of that event, monsoon is likely to be around at 95% (with margin of +/-5%) of LPA, according to Skymet. On the positive side, the easing of crude oil prices (due to increase in production from non-OPEC countries, particularly the US) will have positive effect not only on inflation but on GDP growth, too. Past trends indicates that low oil prices lift global growth (and subsequently domestic growth) significantly. During 2003-2006, when average Brent crude was $47 per barrel, global GDP growth was 5.0% (average) and India's average growth at 8.6%.

Elsewhere, the substitution of collateral security by market participants in the term repo under the LAF will give operational flexibility to the participants, especially small banks, in enhancing liquidity of collaterals in their day to day operations. This move may not have any implications for the larger participants, as they deal with a larger amount of security. For strong ARCs, RBI has proposed to stipulate a minimum NOF (net owned funds) of ₹100 crore. This will focus on turnarounds rather than asset stripping and liquidation of the distressed firms.

Another major step that RBI has taken is to allow banks to invest in Real Estate Investment Trust and Infrastructure Investment Trust. This is a positive, as now banks have more options of investment and, at the same time, will also have a favourable impact on the real estate sector.

Finally, in case of payment and settlement, RBI has introduced additional settlement batches for settlement of National Electronic Fund Transfer (NEFT). Also, merchant discount rate has also been rationalised. These are definitely welcome moves, paving a way for stronger financial infrastructure by encouraging a swift shift to digital modes of payment.



LETTERS TO THE EDITOR

Small countries may be worst-hit by Brexit

APROPOS OF THE REPORT, 'Brexit's biggest loser may actually be Poland' (*FE*, April 5), Britain's decision to exit the European Union (Brexit) has evoked mixed reactions. Some termed the resolution an explosion of Britain's fierce desire to be independent and assertive; others called it an ill-informed mishap. At this stage, it would be imprudent to draw a profit-and-loss account of the future. Nonetheless, some signs are conspicuous to escape the world attention. United Kingdom is deeply divided now; British rulers can no more turn a Nelson's eye to the hardening positions for a separate Scotland and the yearning in Northern Ireland to be with the Republic of Ireland. Britain has two years time from March 2017 onward, to close the crucial negotiations and complete the formalities for the exit. Post exit, England will be out of the common market, which it enjoyed and exploited for decades, and the freedom to manufacture and sell merely a memory to cherish. When a vast market suddenly turns alien, the course of production, exports and imports become unpredictable. Plainly, an unhappy neighbourhood is not an ideal setting for economic prosperity. There is this likelihood of Britain toeing the American line; protectionism pushing liberal economic practices out. Poland's likely misery on immigration feuds ought to be seen with similar concerns in the UK. And the nations across the globe have to unlearn some and adopt some new to stay afloat in the changing economic environment.

— Haridasan Rajan, Kozhikode

Kejriwal's lawyer fees

Apropos of Arvind Kejriwal's payment of legal fee to Ram Jethmalanifrom public funds, I differ with the contention that it is justified because Kejriwal was the CM when he made those comments. There is be no justification for the state government using public money. Incidentally, Kejriwal is also stated in High Court that he had made these allegations in his personal capacity only. The moot question now is: Who will actually bear the burden?

— SK Gupta, New Delhi

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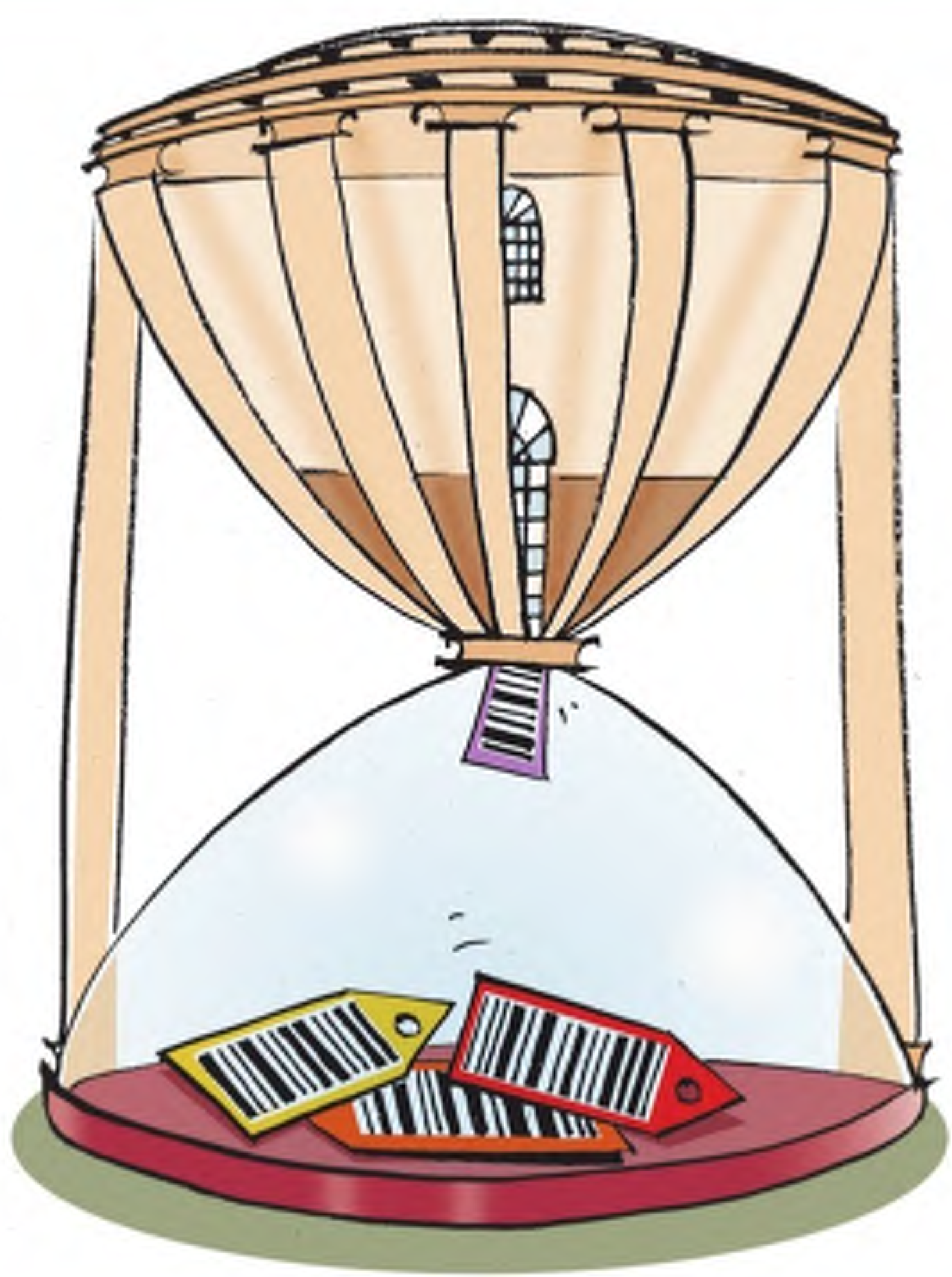

ILLUSTRATION: ROHNIT PHORE

SUJIT KUMAR SINHA

Retired chief commissioner of Customs and Excise and advocate, Delhi High Court

GST marred by 'residence principle'

The many problems that this causes are, to some extent, endemic to taxation of services, but they do not pose such a significant challenge if the Centre collects GST

THE CABINET HAS approved four GST draft Bills for presentation in Parliament. The final draft legislations and GST Council recommendations considerably alter the original idea of GST. The concept of residence in determining the territorial jurisdiction of the states has been used in the taxation of services in GST, and knowing that residence principle of assigning tax jurisdiction generates intense competition between claimant tax regimes (i.e., the base erosion issue in income tax), the Government proposed to ride over the problem by keeping the responsibility of collection of GST on services with the Centre. The GST Council, under pressure from the states, has assigned the collection of GST on most goods and services to state tax departments; so much so that it seems to them that the Centre need not have any role whatsoever. Disturbing as it is to legal experts, the GST Council has gone ahead and made a retro-fitting in the original proposed GST laws, and inserted the concept of residence in the taxation of goods. The principle that residence of a business entity decides which taxing authority will collect tax from it has become a feature common to GST taxation of services and goods. It is a serious question of how much is the new GST plan conducive to cooperative federalism and the degree of revenue security inhering in it.

In today's indirect tax laws, jurisdiction of a tax administration is not dependent on any action that parties in a transaction may undertake. Territorial jurisdiction can be determined by verifiable evidence. In levy of customs duty, the taxing event is the entry of goods into India, verifiable from the Import General Manifest of conveyances. In central excise, the place of physical removal of goods from factory gate decides jurisdiction. Similarly, in VAT, the place of delivery of goods determines which state gets to tax VAT on the transaction. There is no room in these tax laws by which disputes on jurisdiction of a tax department can be raised by making innovative interpretation of the law. This comfort is absent in the levy of service tax, but the problem is limited to transactions between an Indian entity and a foreign entity. The residence principle notoriously lends itself to interpretation, and by artful devices, territorial jurisdiction over taxable transactions can be shifted away from one tax department to another as has happened in income tax with birth of tax havens.

> The residence principle lends itself to interpretation, and by artful devices, territorial jurisdiction over taxable transactions can be shifted away from one tax department to another

Tax departments work under intense pressure from their governments to meet revenue targets and officers universally adopt interpretations of law that suits the revenue interest of their government. The GST plan visualises that a supplying state will cooperate with another state to augment the revenue of the latter in interstate transactions. How cooperative would supplying states be if certain actions of residents in that state can change the jurisdiction of the tax collection from the receiving state to the supplying state? The force with which a few developed states have got the concept of residence inserted in taxation of supply of goods shows that the anxiety is not misplaced. If the consumption principle is fundamental to our indirect tax laws, it can be applied effortlessly in the taxation of goods where there is no difficulty in finding out where goods are being consumed. Why is law being altered to make it possible for someone to create a company which takes orders from a customer, communicates the order to him and, in the process, change the jurisdiction of taxing department? Secondly, this insertion may have been done for certain sectors like iron and steel or cement, but the benefit will have to be given to all goods. The deliberations in the GST Council is a strong indicator of the mindset of states and what they may do when they face competition for revenue from fellow states. There appears no doubt that cooperative federalism will be sacrificed and states will assert their persuasive powers on resident companies to turn an inter-state transaction into an intrastate one, so that revenue paid by a person resident in a state stays in the treasury of that state, to the disadvantage of the consuming states.

Cooperative federalism will further get tested in respect of investigation and searches in tax evasion cases conducted in one state but pertaining to a different state. Assessment, collection or investigation in to evasion of tax on goods or service that has taken place outside the state will have little interest to the officers of that state because such work hampers their functioning. The tax officers and the tax administration of the supplying state itself, may see greater commonality of interest with the resident supplier of the goods rather than the revenue of a different state, as the supplier contributes to the economy of that territory and has political influence. Taxation of inter-state supply of goods and services will always have a shaky foundation and, for that reason, certain trade may see undue advantage in sourcing supplies from outside their own state.

The proposed GST law for services adopts residence as the basic principle for determining the place of provision of service, which again determines which state department will get to collect GST on such a supply. The law makes exceptions for specific services such as that in relation to real estate. There is some administrative convenience in using the residence principle for deciding tax jurisdiction of services as these are intangible goods and they do not have visible movement. The concept itself has an ugly past and a controversial present. Bret Wells and Cym H Lowell, two legal scholars in USA, found that the principle of residence is taken from the lexicon of British imperialism and the purpose was to get taxes paid after World War I by British companies operating in India credited to the British treasury in London. Today, the principle plagues international taxation as profits get exported from countries where they arose to shell companies in tax havens. The GST law will incubate this concept and put one state in unhealthy competition with another state, where each will try to use subterfuges to deprive the other of GST revenues.

The GST Council decision to reject the Centre's suggestion to allow it a minor role in assessment and collection of GST, especially on services, has adverse implications for revenue as well as federalism. In the past, when states came in to conflict over the issue of inter-state sale of goods, it was Centre which intervened and after amending the Constitution enacted the Central Sales Tax Act. Since the, the Centre has been playing a coordinating role in VAT taxation of inter-state sale of goods. The problems in applying the residence principle are many and, to some extent, endemic to taxation of services, but they do not pose such a significant challenge if the Centre collects GST.

The proposed Section 7(3) of IGST that introduces the residence principle in taxation of goods, will open the floodgates to residence manipulation in supply of goods and generate bad blood; it must be deleted if states are to collect this tax. All assessment of services, where the law does not lay down a verifiable evidence to decide the territorial jurisdiction of states, must be assessed and collected by the department of revenue of the central government only. The state of affairs calls for reassigning a vital role to the Centre in the GST regime.

Simplify business of business

JOYJAYANTI CHATTERJEE

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The Companies (Amendment) Bill removes ambiguities from the current law

IN THE WAKE of the liberalisation of the Indian economy in 1991, several attempts were made to revamp and redesign the Companies Act, 1956, to keep pace with the changing rules of the financial world. Attempts were made but ultimately aborted in revamping the company law regime in 1993, 1997 and 2003. Finally, over 50 years later, and in the face of a vastly different world, the Companies Act, 2013, was enacted.

While this piece of legislation made significant inroads into a new era in corporate governance in India, there continued to be some stumbling blocks. As a response to calls from various stakeholders to further streamline the Act, the Companies (Amendment) Bill, 2016, was introduced in Parliament in March 2016. The Standing Committee on Finance carried out another review of the Bill and submitted its findings in December 2016.

Relaxing compliance norms

Moving away from the vestiges of the Licence Raj, and in the spirit of "ease of doing business," the amendments proposed in the Bill are expected to simplify disclosure and compliance requirements for companies. An example of this is doing away with the requirement of government approval for managerial remuneration and replacing it with approval through a special resolution by shareholders in the general meeting. The Bill has suggested simplifying the format of the Board's report and has recommended avoidance of repetitive information. Further, the requirement of filing an extract of the annual return as a part of the Board's report has been removed. An exemption has been provided from uploading individual financial statements of step-down foreign subsidiaries by listed holding companies where consolidated financial statements have been prepared by the foreign subsidiaries in accordance with the laws of the relevant foreign country. In the interests of transparency and fairness, guiding principles for determination of penalties have been introduced, such as size of company, nature of business, injury to public interest, nature/gravity of default and repetition of default.

Encouraging start-ups

The start-up ecosystem in India has seen an unprecedented boom. Taking note of this, the amendment Bill proposes several incentives to start-ups and small companies. The preconditions for a company to be considered "small" have been relaxed and so has the format of the Board's report and annual return for one-person companies and small companies. The fine for non-filing of statutory annual filings has been significantly reduced for such companies. They have been provided more avenues to raise funds, by removing the embargo on companies to advance loans to subsidiaries with common directors.

Harmonising laws

Currently, compliance requirements for companies are spread across the Companies Act, 2013, and allied regulations such as the SEBI Act. The resultant ambiguities and overlaps not only dissuade companies from complying with the relevant laws, but also pose significant practical difficulties in giving effect to their provisions. The amendments are geared towards doing away with dual requirements, especially in the context of separate prescriptions for prospectus and the contents of the Board's report. Provisions on prohibition on forward-dealing and insider-trading have been omitted since those are only relevant for listed entities and are already regulated by Sebi.

Easier management

Unlisted companies will now be allowed to convene annual general meetings at any place in India, as opposed to registered offices, provided approval of all shareholders is obtained in advance. The Bill has empowered the Centre to exempt any class of foreign companies from applicability of registration and other requirements provided in the Act. Foreign companies with merely incidental presence in India may get exemption from registration and other requirements, hopefully putting an end to speculation over this. The Bill attempts to address provisions that were criticised on the grounds of being onerous. Relaxing the restrictions on the number of layers of subsidiaries is a much-needed step towards giving companies greater freedom in the way they structure themselves. Changes for easier compliance, as recommended by the Companies Law Committee, have also been made through amendments in various "rules" notified under the 2013 Act.

The Companies (Amendment) Bill, 2016, is aimed at remedying several problems with the current set-up. Once implemented, it can remove many ambiguities from the current law and streamline its provisions with other relevant laws. With many countries moving towards a "comply or explain" model of corporate governance, giving greater autonomy to businesses in their running and making way for simple and non-burdensome compliance norms are welcome steps.

Framing a model contract farming law

For the model contract farming law to benefit farmers, the precondition is to make it business-friendly by consolidating farmers for production and marketing

DEVESH ROY & PK JOSHI

Devesh Roy is research fellow and PK Joshi is director, South Asia, International Food Policy Research Institute

THE NITI AAYOG IS currently preparing a new model contract farming law—the earlier one was recommended 14 years ago—to revamp the system of firm farm linkages in the Indian agriculture sector. The main objective is to assure procurement from farmers at remunerative prices, while mitigating risks arising due to price fluctuations, especially of perishable commodities.

Global experience shows that contract farming has been able to meet these objectives as it reduces costs of accessing information, services and marketing. Through interlinked arrangements, contract farming reduces production- and marketing-risks. The increase in farmer's income because is brought about through marketing efficiency gains, mainly due to supply-chain compression owing to reduced number of marketing functionaries, and control over retail prices. Therefore, contract farming also generally benefits consumers.

The model marketing Act in 2003 had clear provisions for contract farming, which allow buyers and sellers to transact without routing through *mandis*—an obvious choice for states trying to augment farmers' share in value distribution. Yet, contract farming has not been promoted or has become popular to the extent expected. Even in states that adopted the model marketing Act and allowed direct transactions between organised private sector and producers, contract farming has been minimal.

Contract farming in India does have major success stories. Although in poultry, for example, it has been widely successful, in numerous other commodities contract farming has not taken off or has failed.

One factor that seems to have been instrumental in limiting success in contract farming has been that arrangements have often not fully accounted for the heterogeneity based on socio-economic characteristics of farmers. These include differences based on size of holding as well as capacity or skill to participate in agribusiness. Most reforms, therefore, though well-intentioned, have turned out to be largely ineffective and generally neither inclusive nor business-friendly.

The roadblocks for contract farming relate to both demand as well as supply side of the market. On the supply side, the most important constraint has been the scale of farm produce. Most Indian farmers are marginal and small (86% holdings are less than two hectares). All states, except Punjab, have less than one hectare average size. Bihar has an average size of holding of only 0.3 hectare—here 97% holdings are small. With such small holdings, the marketable surplus of individual farmer has turned out to be extremely small. Buyers have no incentive for contract farming with a large number of small and marginal farmers due to high transactions (e.g., costs related to negotiations) and marketing costs (e.g., cost of collecting produce). Further, the problem is heterogeneity in quality of produce with a large number of small farmers who can't be monitored for quality and safety. If contract farming is to succeed, we have to consolidate farmers through farmer producer organisations (FPOs) and self-help groups as a precursor to firm-farm coordination.

Another problem is related to the regularity in supply of farm produce. A successful business model hinges on secured and consistent supply of raw materials or produce. This also requires buyers to contract with numerous suppliers, increasing transactions costs and creating viability issues. The solution might lie in the following: Upon the formation of FPOs, they could be federated to maintain supply of farm produce on a larger scale and with regularity.

To promote FPOs, the government has constituted the Small Farmers' Agribusiness Consortia (SFAC) under the ministry of agriculture & farmers welfare. It has the status of a society that aims to increase incomes of marginal and small framers through aggregation and development of agribusiness. It also supports FPOs through schemes such as Equity Grant and Credit Guarantee Fund Scheme. The government had declared 2014 as the international year of FPOs. Yet, by January 31, 2017, there were only 580 registered FPOs, and only about 120 FPOs are under process of registration.

Clearly, the number of registered FPOs is extremely low. More than 40% FPOs are concentrated in three states: Madhya Pradesh, Maharashtra and West Bengal. To expedite the registration of FPOs, we propose that the SFAC may be made an independent body like, say, the National Dairy Development Board or National Horticulture Development Board. The independent body needs to sensitise farmers, facilitate formation of FPOs, evolve mechanisms to federate them, and improve capacity on marketing and financial matters.

On the demand side also, there are several conditions for success of contract farming. The question is: Why would an agribusiness entrepreneur choose a contract over spot markets? Earlier studies by the International Food Policy Research Institute and National Institute of Agricultural Economics and Policy Research show that an agribusiness entrepreneur must be engaged in one or more of the following businesses: (1) organised retailing; (2) agro-processing; (3) branding products; (4) exporting farm or processed commodities; and (5) marketing niche commodities. In such cases, spot transactions are not able to deliver because of safety and quality issues. To make contract farming successful, constraints faced at front-end need to be corrected. Failing to do so and the benefits of contract farming would not be fully realised.

Hence, for the model contract farming law to benefit farmers and improve marketing efficiency, it has to be made business-friendly by consolidating farmers for production and marketing. This is possible only through FPOs and their federations. The model law must consider the aggregation issues. Else, the promise of firm-farm coordination might end up with a fate like that of the model Act of the 2003 vintage.