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# Opinion

THURSDAY, APRIL 13, 2017

**GST RATE RELOOK**

Hasmukh Adhia, Revenue Secretary (GoI)

The 18% or 28% rates certainly need a relook, but right now, we can't afford it. Once our revenues are more steady, there is a reason for consumers also to benefit from GST. And that they will.

## RationalExpectations

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# Yogi Adityanath's crushing burden

All the talk of cane arrears sells well, but sugar mills paid farmers ₹19,000 cr extra over the last five years

WHEN THE 14-day-deadline for clearing sugarcane dues for the current year expires, and Uttar Pradesh chief minister Yogi Adityanath has to start taking action against sugar mills like Bajaj Hindusthan—over 55% of the ₹4,200 crore dues are on account of Bajaj—who simply do not have the funds to be able to comply with the UP Cabinet's directive, he will be faced with a peculiar problem. Nearly 36% of Bajaj's equity is owned by PSU banks—it used to be 42% but the banks have sold some of their shares—while that of the promoter Kushagra is down to 26%.

With the company running up large debt to fund a capacity expansion from 31,000 tonnes per day in 2003 to 146,000 by 2008 in response to an incentives policy by the then government to augment capacity in the state—these were rescinded by the next government—and not able to repay since the sector didn't get freed up as it had thought would happen, the banks took a large part of its equity in the restructuring exercise.

Apart from the problem of taking action against PSU banks, the chief minister will be hard put to argue 'diversion' of funds—this is what the government terms the actions of the company—when a committee of five banks controls the entire financial operations of the company. Diversion, of course, is an incorrect term. Though mills were supposed to pay farmers 85% of the money they got from sales of sugar, several have 'diverted' the money to repay bankers and make other payments related to their sugar operations—it is 'diversion', but it is bona fide.

Each sugar mill is different and, since several in the state are able to clear their dues to farmers on time, it is pertinent to ask why the defaulters should be treated leniently. The answer will differ from mill to mill, depending upon how efficiently they are run and how modern their processes are, but the chief minister would do well to keep some basic truths in mind.

To begin with, since farmers sell their cane to the mills over a period of 4-5 months while the latter are able to sell the sugar and other by-products over a period of 12-14 months, there is a big mismatch in revenue streams, and that is what is called 'arrears'—in most cases, including in the case of defaulters, the bulk of dues get cleared within a year's time; the compressed 14-day window is impossible to meet unless mills have enough working capital. And mills with high levels of debt, typically, don't get working capital from banks and, so, delay payments.

> A Bajaj Hindusthan may owe ₹2,314cr to farmers, but with 36% of its equity owned by PSU banks, difficult to argue 'diversion' of funds is to blame

Since each business unit has to be responsible for its viability, it is difficult to legitimise delays in payments using the high-debt argument. But, keep in mind that, were the mills not to take on large sums of debt to expand capacity, it is likely Uttar Pradesh's cane-crushing capacity would be much smaller than it is today—that would have created its own set of problems for farmers.

Ultimately, chief minister Adityanath will have to confront the grim reality that both he and the BJP's central leadership remained blind to as they campaigned in the state and assured farmers that a BJP government in the state would help them get their dues. And that reality is that there is no way the current system of huge overpayments to cane farmers can continue since this is at the heart of the sector's problems—in the case of UP, while the Centre has recommended a price of ₹257 per quintal of cane (based on 10.7% recovery), the state has raised this to ₹307. This is why the UPA set up the Rangarajan committee to suggest a solution to the sector's problems. Rangarajan recommended the government move away from fixing cane prices and, instead, mandate that 75% of all the mills' revenues be shared with the farmers.

In 2016-17, with the mills producing 87 lakh tonnes of sugar, they earned around ₹31,538 crore. And based on the state price of ₹307 per quintal of cane, the 838 lakh tonnes they bought cost them ₹25,727 crore—of course, given the dues, not all of this has been paid. Based on the Rangarajan 75% formula, though, the mills should have paid ₹23,653 crore or ₹2,073 crore less. Do the exercise over the last five years, and the 'extra' payments total ₹18,882 crore.

While the logical course for Yogi Adityanath would be to move to the Rangarajan formula, many in the central and state leadership will argue that the formula is not sacrosanct and nothing but a ploy to rob farmers of their due. While they are entitled to their views, it is worth pointing out that a similar argument was made in the context of the Rangarajan recommendation on hiking natural gas prices—when the BJP refused to hike prices and, after two years, when all exploration in the sector came to a halt, the government found it made sense to hike prices. After all the drama, Adityanath may end up doing the same.

## SafeMETRICS?

New report exposes gaps in fingerprint sensors of phones

WITH CYBER-ATTACKS on the rise, has security got only notional value? To think that the enhanced security features that devices today come with offer even significant, if not complete cover, would be fallacious. Cellphone makers brought in fingerprint sensors to address the problems that personal identification numbers (PINs) and lock patterns posed. But researchers at the New York University and Michigan State University have been able to develop a set of "Masterprints" that could simulate real-world fingerprints—they were a match in 65% of the test cases. Although the research has just been tested on mid-range fingerprint scanners and not phones, the findings can be dangerous implications for smartphone makers like Apple and Samsung, which have been asking people to use their pay services that require linking of cards and accounts. The researchers say that the likelihood of hacking for phones may be higher as smartphones have smaller fingerprint scanners, which only take a partial print. More important, people often configure more than one print for their phones. Besides, with Japanese researchers claiming earlier this year that fingerprints could be picked up from selfies, the job may be easier.

Companies are still trying their best to keep data off-limits from hackers. Qualcomm has announced new fingerprint scanners which use ultrasound, while other companies are trying their best to ensure that phones cannot open without actual presence. But even these do not offer full-proof solutions. For instance, some were reporting that people were able to bypass the advanced retina scanners incorporated by Samsung in its Note 7 phones using photographs. But experts say this may not be a problem with the upcoming S8. Security is a game of thinking ahead and companies are trying their best to stay ahead. More important, with governments' increasing reliance on technology—Aadhaar is required for most services in India—they need to be more cautious on tackling cyberthreats. As for hackers, much like technology, security also offers no end-game, and one can expect many more studies bypassing existing security mechanisms.

**SPECIAL LEAVE PREDILECTION**

JUDGES CAN TAKE THEIR LEAVE BUT WHY DOES THIS HAVE TO BE COLLECTIVE WITH THE COURTS SHUTTING DOWN?

# Let's look at getting a 365-day court

BIBEK DEBROY

Member, NITI Aayog

SUPREME COURT OF INDIA issued a notice on March 23, 2017. "The Learned Members of the Bar are hereby informed that during the Summer Vacation, 2017 commencing from 11.05.2017 and ending with 02.07.2017, regular hearing matters will be taken up for hearing before the Vacation Bench from Tuesday to Friday, as per the guidelines and norms approved by Hon'ble the Chief Justice of India." The Supreme Court Registry also issued an advance list of 5,298 cases, to be heard between May 11 and July 2. Subsequently, an unstarred question was asked (no.5250) about this in the Lok Sabha on April 5, asking whether government intended to discontinue with the system of summer and winter vacations in courts. Answering the question, minister of state for law and justice said this wasn't for government to decide. Durations of vacations are fixed by High Courts/Supreme Court through rules/regulations, not by government. For district/subordinate courts, they are fixed by High Courts. Hence, Supreme Court Rules of 2013. "The period of the summer vacation shall not exceed seven weeks.... The length of the summer vacation of the Court and the number of holidays for the Court and the offices of the Court shall be such as may be fixed by the Chief Justice and notified in the Official Gazette so as not to exceed one hundred and three days (excluding Sundays not falling in the vacation and during holidays)."

Note that before 2013, there were Supreme Court Rules of 1966. "The period of the summer vacation shall not exceed ten weeks... The length of the summer vacation of the Court and the number of holidays for the Court and the offices of the Court shall be such as may be fixed by the Chief Justice and notified in the Official Gazette so as not to exceed one hundred and three days (excluding Sundays) not falling in the vacation and during holidays." In 2013, length of the summer vacation was shortened, but not the cap of 103. That cap of 103 is misleading, it doesn't include Sundays and other holidays (Holi, Diwali, Dussehra). At the time of the 2013 change, the then Chief Justice told us, Supreme Court works for 193 days, High Courts for 210 days and lower courts for 245 days a year. A couple of years ago, Jharkhand High Court also agreed to work through the summer vacation. In August 2009, there was a report by Law Commission, titled *Reforms in the Judiciary* (Report No. 230).

A lot of people quote from this report. I am not necessarily convinced they have read the report. They approvingly quote the following. "Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an-hour." This sentence certainly figures in the report, but as recommendations from a paper written by Justice Asok Kumar Ganguly in *Halsbury's Law Monthly*. Lest I be accused of nit-picking, the 18th Law Commission did approve of Justice Ganguly's suggestions (there were others too). The summer vacation system is invariably ascribed to a British colonial legacy, avoiding the hot Indian summer. Some time ago, there was an RTI application addressed to Supreme Court, asking about antecedents of the summer vacation. Since Supreme Court came into existence in 1950, the Central Public Information Officer (CPIO) responded that they had no information about the antecedents. I suspect one should hunt for antecedents in rules of Federal Court of India or Government of India Act of 1935.

> While a 3-week paid leave is an ILO entitlement, high courts work for 201 days a year and SC 193. But, more important, when the police and doctors go on leave, they do so by rotation and the organisation doesn't shut down as courts do

There are 61,344 matters pending before Supreme Court. Therefore, everyone will approve of Supreme Court's order of March 23. But what's more interesting is the idea of a 365-day court, something that lawyers (Bar Council, Supreme Court Bar Association) don't seem to like either. In 2014, the then Chief Justice of India wrote a letter to Chief Justices of High Courts, mooting the idea. "In other words, the courts should function all year round, giving individual judges the choice of holidays and vacations. For working of this idea, I had suggested that by the end of September, each judge should indicate holidays and vacations he or she wants to avail of in the succeeding year. The registry will then finalize the sittings having regard to the options given by the respective judges." That's exactly the way US Supreme Court functions. But there is great resistance to the idea of delinking individual vacations from collective ones (where the entire institution closes down), and this is true in general, outside the court system too. In 2013, Suraj Parkash Manchanda filed a PIL in Delhi High Court, asking this question. According to newspapers, the petitioner asked, "Why all judges go on vacation at the same time and why there cannot be a rotation as in the police and for doctors in hospitals?" The petition was dismissed and the bench reportedly remarked, "If there is no summer vacation, judges will go mad. Are they expected to work 365 days a year?" I haven't been able to track down what happened to a similar PIL, filed before Madras High Court. No one wants anyone to go mad. Everyone is entitled to leave. Three weeks of paid annual leave is an ILO entitlement. But does it have to be collective? Does India shut down for 21 days a year, defence, police, and so on?

*Views are personal*

# Even scientists have trouble with logic

They often wrongly interpret their data to make unjustifiably absolute claims—a leap that has been termed "dichotomania"

FAYE FLAM

Bloomberg

STATISTICS PROFESSOR SANDER Greenland had just finished lecturing a group of students and doctors at Harvard Medical School about errors researchers make when interpreting evidence. Chatting with me in the hallway afterwards, he brought up an unlikely topic—a celebrity-driven campaign called the "thimerosal challenge." As I quickly learned, actor Robert De Niro and lawyer Robert Kennedy Jr. had offered $100,000 to anyone who could demonstrate the safety of this mercury-containing preservative used in flu vaccines.

Greenland mentioned this not to shame non-scientists for meddling in medical affairs. He wanted to point out the errors of logic and reasoning on the side of the professionals reacting to the challenge—the people who should know better. The challenge itself is based on a misunderstanding. Medical researchers don't prove drugs or additives are absolutely safe; rather, they try to establish a reasonable risk-benefit ratio. But scientists, he said, often wrongly interpret their data to make unjustifiably absolute claims—a logical leap he diagnosed in his lecture as "dichotomania". He made a case that at the heart of many of the mathematical and statistical errors in medical research are logical errors—false dichotomies, unjustified assumptions, and the failure to distinguish between evidence of absence and absence of evidence.

Doctors and science journalists often reassure people that "there's no evidence" a given treatment is dangerous. This statement "makes it sound like you have something you've observed regarding safety," he said. But the statement might mean only that there's very little evidence pointing one way or the other.

That same logical error shows up in the way scientists sometimes misuse the concept known as statistical significance. "Statistical significance" is a great marketing tool because it sounds like a mathematical seal of approval. But statisticians complain that many scientists don't understand what it really means.

Computing statistical significance is useful for helping scientists avoid being fooled by randomness, since people's behaviour, performance on tests, experience of headaches or even deaths vary in an unpredictable way that may have nothing to do with whatever intervention drug or food is being studied. Statistical significance is usually expressed as a number between 0 and 1 known as a p-value, with a lower value indicating greater statistical significance.

People wrongly think the p-value is equivalent to the odds that the effect they're testing does not exist, said Greenland. But it's really something more subtle: a statement about how unlikely it is to get a certain set of data, assuming that the effect they're studying doesn't exist.

Let's say a drug is tested among a group of 200 patients for five years, and 20 of them die. Does that mean your drug is a killer? The p-value can't tell you, but it offers a clue. It indicates how likely it would be for at least 20 people to die in a group of that size over the same time period, assuming the drug had no effect. The smaller the p-value, the less likely the deaths and the bigger the red flags.

While statistical significance is a continuum, medical research by convention has turned it into a yes-or-no question: Journals have informally decided that results should be considered statistically significant only if the p-value is 5% or lower. In the above example, this would correspond to a 5% chance of all those deaths occurring assuming the drug posed no danger. But what if a study gave a p-value of 6%? Greenland's concern is that scientists might wrongly interpret that result to mean the deaths weren't worth noting. He's not alone in his concern. Last year, the blog, *Retraction Watch*, claimed "We're using a common statistical test all wrong." Researchers from psychology, economics and biomedical research are now reconsidering a rash of dubious claims whose apparent statistical significance evaporated when others tried similar experiments.

But so far most of the focus has been on false positives—researchers overselling low p-values as proof their findings are real. Greenland worries about false negatives—overselling a high p-value to declare there's no danger to an intervention. Results can be statistically significant and turn out to be wrong, or statistically insignificant and right.

To use a real-life example from Greenland's talk, a 2013 study found a statistically significant association between statins, which are a class of drug used to lower cholesterol, and a type of cancer called glioma. In this case, it was a positive side effect—people taking statins had fewer cases of glioma than those in a control group. A study attempting to replicate the 2013 finding showed the same association as well, but it wasn't statistically significant—the p-value was higher.

The authors of the second study claimed they had refuted the first one, Greenland said, but the opposite was actually true. The second study bolstered the first, since researchers had once again observed the same effect.

This comes back to Greenland's "dichotomania," which has made it difficult to regain public trust regarding the safety of vaccines. The best medical researchers can do is consider risk-benefit ratios, as another statistician, Steven Goodman, has explained regarding the MMR vaccine. There have been dozens of studies—enough to show that the risks associated with the MMR vaccine are far lower than the risks unvaccinated children face from the diseases. Greenland says Kennedy and De Niro should indeed be asking for a risk-benefit ratio for thimerosal, which in the US was removed from MMR vaccines but is still used in flu shots. Their critics have erred, too, by simply pointing out that people still die from the flu. That doesn't speak to the risks of taking away the preservative, since flu vaccines can still be made without it.

Those on the side of science probably can't win the $100,000 no matter what, since the Hollywood-side failed to pose the right question. But those who believe in the value of thimerosal should still do the correct risk-benefit calculations. It's good practice, it will engender public trust, and people's lives are at stake.

## LETTERS TO THE EDITOR

### Don't bring in a hobbled GST structure

THIS IS WITH reference to the news story "Cascading impact on prices for exemptions from GST" (*FE*, April 8), wherein Parthasarathi Shome, a former advisor to the finance minister and a noted policy expert, has said that cascading impact on prices would continue as businesses or industries using petroleum, electricity and real estate will not be given input tax credit under the GST regime. I have a different point of view. We should think of making the GST law simple, easy to understand and implementable without any GST credit and by having the lowest rate, of 2% only. My suggestion is to have GST rate for services at 15% with no cess or surcharge or with no GST credit facility. Excise duty for petroleum, cement, electricity, tobacco products (being sin items) motor vehicles (being luxury items) or alcohol should not be reduced. However, for all other items, GST rate should be reduced to 2% with no GST credit. This proposal will not result into fall of collection of GST and every industry and business will be happy. However, if we allow credit of input tax to industry and business which use petroleum products, then collection of GST is bound to fall. We should also remember that the indirect tax reform, started in the year 1968, had no concept of input tax credit and indirect tax used to make for 80% of collections while direct tax made for the remainder.

— SC Aggarwal, Australia

### Focus on renewables

APROPOS OF the editorial "Rock solid" (*FE*, April 12), human ingenuity has enabled technology to leap-frog in every conceivable area of its engagement. If drastically reducing cost of non-conventional power was one, its intermittent nature of generation has since propelled furious efforts into storing it. To date, no technology has proven cheap and viable to cater for the massive requirement in the scale of storage. We must focus on building giant storage. Besides liberal funding, long-haul investment incentives are needed.

— R Narayanan, Ghaziabad

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# Growth and asset failure

Tackling some nagging issues beyond the mundane

**NPA and profitability ratios of banks** (in %)

| | NPA | NPA NET OF PROVISIONS TO CAPITAL | ROA | ROE |
|---|---|---|---|---|
| Italy | 17.5 | 84.34 | 0.11 | 1.45 |
| Portugal | 12.64 | 37.96 | 0.1 | 1.22 |
| Russia | 9.64 | 17.41 | 0.23 | 1.96 |
| India | 9.19 | 38.71 | 0.37 | 5.09 |
| Spain | 5.64 | 29.81 | 0.39 | 5.49 |
| France | 3.92 | 18.5 | 0.41 | 7.45 |
| Brazil | 3.85 | -11.44 | 1.24 | 13.28 |
| Turkey | 3.19 | 3.88 | 1.96 | 17.49 |
| Indonesia | 2.9 | 5.66 | 3.02 | 20.67 |
| South Africa | 2.85 | 15.24 | 1.71 | 22.49 |
| Germany | 2.34 | 21.28 | 0.4 | 7.52 |
| China | 1.75 | -7.95 | 0.55 | 7.58 |
| Japan | 1.47 | 11.52 | 0.29 | 6.88 |
| US | 1.32 | 6.62 | 0.37 | 3.16 |
| UK | 1.1 | 4.33 | 0.37 | 5.57 |

Source: IMF

**THE NPA ISSUE** has now come to occupy centre-stage, with there being a clarion call to set things right. There are two aspects to this. The first is the build-up and recognition of these NPAs and the second is their resolution. The focus, today, is more on the second part. The major challenge is that if these assets are to be disposed of, then someone has to put in money (in case of ARCs) and bankers have to be willing to operate without fear for selling cheap. Unfortunately, no one is willing to put money on the table, and bankers are not confident about natural repercussions in the future.

One of the reasons for high NPAs is the practice of better recognition of these assets being pursued as they were swept under the carpet by being called restructured assets in the past. Curiously, when this was done, no one objected and such acts were justified as being necessary on account of projects failing due to extraneous conditions like policy impediments. But doesn't this hold for almost all loans that turn bad when conditions turn adverse? How serious is this issue today?

To put it in global perspective, the accompanying table provides four major indicators for banking systems in 15 countries for the latest quarter of 2016 as presented by the IMF. The countries chosen are a blend of developed and developing nations to highlight these patterns. Countries in Africa and CIS have been excluded where numbers are extreme.

India is high up in this list with Italy, Portugal and Russia being above us. The number of 9.2% compares with Cameroon, Algeria, Bhutan, Armenia and Hungary which have ratios between 9-10%. This is not good news considering that we do claim we are one of the front-runners in growth and development in the world.

The second column gives data on the ratio of NPLs adjusted for provisions to capital, which is a better way of depicting NPLs in relation to capital. Here, too, we do not do well with 38% of capital being vulnerable to be wiped out on this score. Italy is disastrous, while Portugal comes close to India. Spain is quite high at 29% and Germany, surprisingly, with lower NPL ratio has 21% of capital being vulnerable to NPLs. This ratio is important as it captures the combination of NPA and capital adequacy as it indicates the adequacy of capital in the light of impaired assets.

The last two columns provide information on both return on assets and return on equity, where we are ranked 9th and 11th, respectively, and hence well below the median value. Providing for these NPLs does push down profits and gets reflected here.

Two thoughts come to mind. In India, the outstanding debt from the formal sector is around ₹130 lakh crore and includes banks, corporate debt market, ECBs, financial institutions and NBFCs. Banks account for around 60% with outstanding loans of ₹75 lakh crore. If one were to look at NPLs in other segments, the picture is stark. In case of FIs, it is less than 1/2%. For NBFCs, it varies between 3-5%, depending on whether they are deposit or non-deposit taking entities. For both corporate debt and ECBs, the numbers are almost negligible—though arguably only the better borrowers have access to these markets.

This means there is fundamentally something different in the systems of banks that led to the build-up of NPAs and that does not get replicated in other segments. Clearly, the credit systems need to be examined in detail to pinpoint where the fault lines lie. It would be a combination of the credit appraisal techniques and understanding, decision-taking, follow-up processes as well as the quality of borrowers as those which are not good would also have no other source of borrowing.

The second thought would call for debate. There are two parallel developments in the economy. First, we do take pride that ours is the fastest growing economy and has been for several years. The question is that as all growth has to be financed by the system, there is a chasm when one puts in the second part of the piece, which is bank NPAs. Is it that we have achieved high growth by being injudicious in lending—an allegation that is often made in China where banks have been pushing in funds to keep the wheels rolling at a fast pace?

This is interesting because, as the table shows, high NPAs normally go along with countries that are on a decline and have deep problems in the real sector. The euro crisis dented growth prospects of several nations which get reflected in these numbers. But the Indian case is unique because growth has been high with focus on infra creation (also the case in China) as well as capacity additions in industry in the face of easy availability of credit. But it does appear that ever since the economy slowed down post FY14, the NPA issue has come to the fore with the same getting highlighted when RBI spoke of their recognition.

Given that such magnitude of NPLs has built up over years and not due to single quarter disturbances, we need to introspect. Has it been a case that we have fostered high investment and growth through reckless lending? We have heard of the rise and fall of the junk bond market where companies borrow at high rates as they carry commensurate risk. Is there a parallel in the banking sector? This is important to address because if we are working on a new path to growth where finance will still come from the banking sector, which will be equipped with more capital, it should not be a case of return to imprudent lending.

# Can long-term banks be a long-term solution?

DHANANJAY BAPAT
The author is assistant professor, IIM Raipur. Views are personal

**ON APRIL 7,** RBI placed a discussion paper on wholesale and long-term finance banks. It takes us back to the time when development finance institutes (DFIs) were established for wholesale and long-term financing. Although the discussion paper has gone far and wide in capturing the global experience, it seems to have ignored past lessons of DFIs, which had landed into problems. They were either converted into universal banks or acted as refinance institutes with oversight from RBI. Technology and strategy became an asset for few performing universal banks when DFIs were converted.

Now, there is a possibility of repeating the same mistakes, followed by a likelihood of institutions facing inherent problems of long-term financing, and thereafter scouting for options of moving such institutions either at a lower scale or converting them into a universal bank. In the future, in case wholesale and long-term financing fails, it can come at a huge cost. RBI discussion paper is inclined towards hardware with scant attention towards management structure, governance, strategy and technology.

Even among DFIs, a few could be converted into universal banks—IDBI found it difficult to make the transition. This could have happened as the newly-created universal bank was headed by top management with past expertise in corporate banking. The merger of IDBI and IDBI Bank affected its retail banking competency. There was also a misfit when a top management came with different orientation to lead the peculiar culture of IDBI Bank.

In the past, PSBs considered wholesale and long-term financing as an easy approach, to lend at lower rates, as it happened at the head office without a required expertise in corporate banking. PSBs resorted to acquisition of bulk deposits from corporates at higher rates and lending to similar corporates at lower rates. The increase in lending to corporates and infrastructure beyond a certain level created problems because such loans have a long gestation period but deposits are of lower duration, leading to asset liability mismatch. In some cases, the situation became difficult when a manager with experience in other functions was posted in corporate banking. To make matters worse, corporate debt restructuring delayed the problem of showing high NPAs. Finally, the proportion of restructured loans and NPAs impacted profitability. Rather than focusing on branches to leverage retail lending, lending to corporates without due diligence led to the vicious cycle of low profitability, lower growth and lower qualitative performance. In other segments, populist schemes, such as agriculture debt waiver and debt relief, distorted credit culture and continuance of financial inclusion, as a social obligation but not as a profitable opportunity. At a time when PSBs are yet to come out of shock of lending to corporates and the current banking environment is full of experimentation with entry of payments banks and small finance banks, revival of PSBs seems to be a distant illusion. Attempts have been to revive through Indradhanush, but we are yet to witness results. To the contrary, we are witnessing divergence in profitability levels between PSBs and private banks.

INFRA PUSH

# Building on the PPP platform

SK SAYAL
The author is MD & CEO, Bharti Realty. Views are personal

Despite challenges, there is no doubt the PPP model could be suitable to drive India's infrastructure development

**IN INDIA, THE PPP** (public-private partnership) model is contentious, with some stakeholders considering it a 'boon' and others a 'bane'. There is no doubt that Indian PPP projects have not been as successful as elsewhere. But this is primarily because certain drawbacks have been inherent in domestic PPP projects, such as flawed risk-sharing, a trust deficit between the government and the private sector, the decision on user charges, etc.

Despite challenges, there is no doubt the PPP model could be suitable to drive India's infrastructure development. Typically, infrastructure projects have long timelines and gestation periods, while requiring robust experience and deep pockets. Given the stringent parameters, the PPP model offers the best of both worlds in executing such projects, since a single entity may not possess the requisite wherewithal to executing them.

Ambitious national programmes such as 100 Smart Cities, Housing for All by 2022, nationwide infrastructure development, etc, have tough objectives and demand a high level of expertise to promote execution and timely deliveries. For such projects, the slew of skills needed may not be found under a single roof. Smart cities would need the expertise of various consultants in wastewater, green energy, rainwater harvesting, modern traffic management, rail and road networks, Internet of Things, to name a few.

This means taking the help of consultants in diverse fields to ascertain the best technologies come on board in developing a green-field or brown-field Smart City. Depending on just a single consultant or vendor would lead to faulty project implementation. Such a failure would only add further grist to critics of the PPP model.

Instead, it is necessary to focus on PPP success stories. The top examples here are the creation of India's best airports in Delhi, Mumbai and Bengaluru. These world-class developments need to be studied and their best features emulated in similar scenarios elsewhere.

> Considering the stringent norms and wherewithal required for infrastructure projects, PPPs are imperative to plug the country's infrastructure shortfalls

In all PPP developments, private players can contribute their might via sector-specific experience. This would not only ensure effective execution of projects, but also adherence to timely deliveries through stipulated deadlines. The building of bridges, roadways, railways, highways, ports, airports, etc, can only benefit from the professional approach and global best practices that are available through the PPP model.

The model can be particularly beneficial for the private sector as this is an asset light one, wherein private players are not required to incur expenses on capacity expansion. But the PPP model needs to be refined so the old fault lines are no more present. To begin with, balanced risk sharing can help prevent the problems that arise on this count.

To improve trust quotient, transparent policies need to be adhered to by both partners. The responsibilities and tasks of both should be outlined in advance. This is more important for controversial issues such as the acquisition of land, environmental clearances, construction-related approvals, etc. A proper dispute redressal mechanism must be in place. In the event of any divergence of opinion, the dispute could be resolved quickly if such a mechanism is in place at the outset. Towards this goal, the government will be passing an Act for dispute resolution of PPP infrastructure projects.

If such safeguards are in force for PPP projects, their success rate could be higher. A higher success ratio will, in turn, help blur the previous high-profile failures, the most notable being those in power projects. The other important aspect is allowing ample exit avenues, should the need arise under certain circumstances. Investors are wary when investments are welcomed, but withdrawals face a series of riders that make it virtually impossible to exit a project.

Policy reforms and amendments could go a long way in making PPP models more attractive for private investors. In Budget FY18, the government proposed amending the Airports Authority of India Act to permit effective monetisation of land assets. The money garnered would then be utilised in upgrading existing airports.

The government has said a new Metro Rail Policy would be announced focusing on innovative models of implementation and financing, coupled with standardisation and indigenisation of hardware and software. A new Metro Rail Act is in the offing too. It would boost greater participation and investment in construction.

The NDA government has indicated its seriousness in promoting infrastructure in a big way. The policy measures underway will ascertain the PPP model garners more success stories as it addresses the country's infrastructure shortfalls.

# Holding reform to ransom

It is crucial for the Bar Council of India to appreciate the reformative exercise instead of countering it blindly

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**AFTER WEEKS OF** confrontation, the face-off between the Bar Council of India (BCI) and the Law Commission has reached a boiling point. The BCI—the top regulator of legal profession—has reportedly passed a resolution calling for the removal of the current Chairperson of the Law Commission, Dr (Justice) BS Chauhan. The resolution addressed to all State Bar Councils urges advocates across India to call a strike on April 21 and 'burn copies of the recommendations and bill of the Law Commission'. This report was submitted by the Commission to the ministry, proposing overhauling reforms to the regulation of legal profession in India. It suggests some unprecedented amendments to the Advocates Act, notably the inclusion of non-advocate members on state Bar Councils and the BCI, as well as the statute declaring strikes by lawyers unlawful.

The exercise of improving the legal profession has been attempted at several junctions, and on all those instances, efforts of significant reform have been scuttled by the BCI, using strikes as a weapon. The most recent incident was last year when the Madras HC amended its rules of practice, to allow the High Court to prevent advocates from appearing before it, in the event they were culpable of violating the amended rules of practice. On that occasion, the BCI, in an unprecedented show of its regulatory powers, suspended the licences of 126 advocates.

What has become evident from the incident in Chennai, as well as the ongoing confrontation, is the inability of the Bar to accept any reform to the status quo. The inadequacy of the legal profession is no secret—the Apex Court on numerous occasions has hauled up individual lawyers, as well as the BCI, for its failure to impose professional standards. Members of the legal fraternity, including advocates, have also called for stronger regulations in the past.

The SC recently took a strong note of the declining standards of professionalism amongst legal practitioners (*Mahipal Singh versus Union of India*). It tasked the Law Commission to review the existing regulatory framework for the legal profession, and make recommendations for its strengthening. Pursuant to this mandate, the Law Commission dutifully sought inputs of all concerned stakeholders over an elaborate process of months, including the State Bar Councils and various Bar Associations.

A deserted district court after lawyers went on a nation-wide strike called by BCI to protest against law commission's recommendations, in Bhopal

The 266th Law Commission report has proposed major amendments to the Advocates Act regarding the constitution and functions of Bar Councils, providing for the registration and regulation of law firms and foreign lawyers, defining the term 'misconduct' and providing clear penalties for professional misconduct, and increasing accountability by setting up grievance redressal mechanisms for litigants to complain against advocates. It is pertinent to point out that the proposed amendments will require certain fine-tuning and further redrafting, and must not be accepted with finality in their current form. For instance, there is needless repetition in the proposed amendments to Section 7 (functions of the BCI). Additionally, there are certain drafting errors in the existing Advocates Act which have not been rectified (like the erroneous wording of Section 36). However, the reconsideration and revision of these amendments is not the challenge; the paramount concern here is the obdurate posturing of the BCI and members of the Bar against any efforts at discussing some much-needed reform for improving the professional standards of the legal profession.

There is a patent problem with the BCI's stand against the proposed recommendations—at no point has the BCI or any of the State Bar Councils presented a detailed reasoning for disagreement. Instead, ambiguous and rhetorical phrases like 'independence of the Bar' and 'safeguarding the legal profession' have been peddled as platitudes. This stubbornness, unfortunately, puts the Bar at a backfoot. Its resentment seems less driven by cogent reasoning and more by blind obstinacy against any change to the status quo. It is not civil disobedience, but a meaningless participation in unlawful actions when courts are available to challenge an arbitrary reforms and amendments.

It is crucial for the Bar to appreciate that instead of countering reformative exercise blindly, it may be productive to engage and collaborate with the policy-makers to come out with a comprehensive set of amendments. Defiance will not serve anyone, nor will actions that erode the rule of law.